

This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

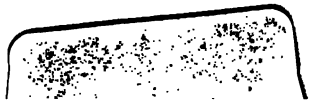
LAWYERS

AND

DOCTORS

ORPHANS AND GUARDIANS.

READ.



LAWYERS AND DOCTORS;

ORPHANS AND GUARDIANS.

Lawyers and Doctors;
Orphans and Guardians:

A PLEA FOR THE BETTER LEGISLATIVE PROTECTION OF MEDICAL MEN AND HELPLESS PATIENTS:

THE LAW OF MEDICAL FEES, AND A SCHEME FOR APPOINTING MEDICAL ASSESSORS.



BY DAVID READ.

"Out of this nettle danger, we pluck the flower safety."
1 HENRY IV., act 2, scene 3

LONDON:
ROBERT HARDWICKE, 192, PICCADILLY.
1870.

157. m. 137.

CONTENTS.

INTRODUCTION pp. ix.—xvi.

CHAPTER I.

§§ 1-3. Medical education at Edinburgh.—§§ 4-6. Unjust accusations founded on the case of Sanger *v.* Sanger.—§§ 7, 8. Appeal to the Medical Profession and the Public p. 1

CHAPTER II.

§§ 1-5. The late Mr. William Sanger—His will—His widow and two children—The sole executor and trustee—His solicitor.—§§ 6-8. The fortunes of the children.—§§ 9-12. Family feuds—The Chancery suit of Sanger *v.* Sanger—The next friend of the infants.—§ 13. The infants become wards of court 6

CHAPTER III.

§ 1. Further family dissensions — Appointment of guardians.—§§ 2-4. Qualifications, duties, and powers of guardians.—§ 5. Children placed at the school of Mrs. Twigg.—§ 6. The mother forbidden to visit them.—§ 8. Mode in which the court controls parental rights. —§§ 9-13. The character of Mrs. Twigg and her establishment 12

CHAPTER IV.

§§ 1-3. The elder ward, Lilly Laurence Sanger.—§§ 4-6. Illness of Eva Sanger—Mesenteric disease—Her perilous condition.—§§ 7, 8. Sir James Mackintosh quoted.—§ 9. Family discords.—§§ 10, 11. Sir William Jenner.—§§ 12-14. Extraordinary conduct of the acting guardian.—§§ 15-18. Mrs. Sanger—Lord Romilly's order in her favour.—§ 19. Her interviews with her child.—§§ 20-22. Two visits to Worthing—Propriety and necessity of these visits . . 20

CHAPTER V.

§§ 1, 2. Return of Eva Sanger from Worthing.—§§ 3, 4. Improper interference of schoolmistress.—§ 5. Second consultation with Sir William Jenner.—§§ 6, 7. The removal of the child from London advised.—§§ 8, 9. Mr. Serjeant Atkinson's letter—The advice of Sir William Jenner and Dr. Clark disobeyed—Reprehensible neglect of the acting guardian and continued interference of the schoolmistress.—§ 10. Letter of 24th July.—§§ 11, 12. Singular correspondence between the acting guardian and his solicitors.—§ 13. Dr. Clark's letter unanswered—Reflections on the correspondence and conduct of the parties.—§ 14. Responsibility of Medical men.—§§ 15, 16. Malpractice or *mala-praxis*—its civil and penal consequences.—§§ 17-19. The acting guardian illegally removes the elder ward from England—Contempt of the Court of Chancery—Indignation and threats of the mother—Precipitate return of the guardian and his ward.—§ 20. Reflections 29

CHAPTER VI.

§ 1. Eva Sanger at Brighton.—§ 2. Peculiar position of her Medical attendant.—§ 3. Danger of a relapse—The three visits to Brighton. —§§ 4, 5. Return of Eva Sanger to Macclesfield House—Annoying system of obstruction continued by the schoolmistress.—§ 6. The mother's letter of inquiry.—§§ 7-9. Third consultation with Sir William Jenner—Mr. Godwin raises objections—The acting guardian and Mrs. Twigg absent themselves—Sir William Jenner's certificate. —§§ 10-12. Subsequent correspondence with the guardians, and explanatory comments.—§§ 13, 14. Discourteous dismissal—The young ward left without Medical aid.—§ 15. Analysis of Dr. Clark's professional visits.—§ 16. Frivolous cavils refuted.—§§ 17-19. Vindication of his conduct—Extraordinary statements and proceedings of the acting guardian criticised and censured.—§ 20. Lord Langdale quoted 40

CHAPTER VII.

§ 1. Mr. Serjeant Atkinson applies for account.—§§ 2, 3. His conduct and affidavit.—§ 4. Short claim delivered—Full particulars requested. —§ 5. Certificate of Professor Russell Reynolds.—§ 6. Delivery of full accounts A and B, and analysis.—§ 7. The guardians suggest an application to the court.—§§ 8-10. Medical arbitration proposed and rejected—The Guardians agree to originate proceedings.— §§ 11, 12. Subsequent correspondence and transactions.—§§ 13-17. Withdrawal of any claim upon the guardians personally—Final refusal of guardians to initiate proceedings as promised—Strange procedure of Mr. Godwin 54

CHAPTER VIII.

§ 1. Retrospect.—§§ 2, 3. Commencement of litigation.—§ 4. Chancery Judge's Chambers.—§§ 5, 6. The managing officials—Chief clerks—Junior clerks—Assistant clerks—Their judicial competency questioned.—§§ 7-10. Idle and mischievous conduct of chief clerks in certain cases—Their pretended decisions nugatory—Their refusal to give reasons censured—Evil results of the system to poor suitors.— §§ 11-15. The new "Chief Clerks" weighed in the balance with the old "Masters in Ordinary" and found wanting . . . 65

CHAPTER IX.

§§ 1, 2. Progress of proceedings in Judges' Chambers.—§§ 3-5. Irregular correspondence admitted as evidence by the chief clerk—Technical quibbles—Offensive character of parts of correspondence.—§ 5. List of affidavits filed on both sides.—§§ 6, 7. Offer of one hundred guineas declined.—§§ 8, 9. Chief clerk's contracted notions—Right of the suitor to be heard by Judge in person.—§§ 10, 11. Strange proceedings and misjudgment of chief clerks—A Fixed sum awarded —Refusal of chief clerk to distinguish items allowed from those disallowed—Or to state reasons.—§ 12. Reflections on the new tribunal 73

CHAPTER X.

§§ 1-5. Increase of difficulties through chief clerk's determination—Legal cobwebs—Lord Dundreary's puzzle in Chancery—Inability to instruct counsel—Perilous position of a suitor.—§§ 6-9. Why should suitors

be kept in ignorance or bamboozled?—Evil results of the new system.—§§ 10-13. The case opened by Mr. Jessel, Q.C.—Lord Romilly condescendingly explains his clerk's mysterious figures—The case adjourned until Monday.—§§ 13-15. Disgraceful publication during adjournment of libellous newspaper reports.—§ 15. Subsequent correspondence thereon with Mr. John Chester.—§§ 13-15. Mr. Colt resumes the argument.—§ 16. Colloquy between Lord Romilly and Sir Richard Baggally.—§ 16. Shorthand-writer's report of Lord Romilly's judgment.—§§ 17, 18. The material questions remain unsolved—Oh! for one hour of Lord Eldon!—§§ 18, 19. Fearful amount of useless law costs—Extracts from a Comic Journal.—§§ 20, 21. Newspaper reports.—§ 22. Appropriate reflections 81

.

CHAPTER XI.

§§ 1, 2. Origin of the Three Orders of the Medical Profession,—Physicians, Surgeons and Apothecaries.—§§ 3, 4. Alleged distinction between Medicine and Surgery controverted—Illustrations of its inexpediency in certain cases.—§§ 5-11. General practitioners.—§ 7. Physicians' fees formerly honorary—§ 8. Except by special agreement.—§ 9. Alteration of the law by the Medical Act, 1858.—§§ 9-12. Physicians can now recover their fees . . . 96

CHAPTER XII.

§ 1. Medical men must supply the needs of all classes—§ 2. Consequently there can be no fixed tariff.—§§ 3, 4. Diversity of charges a necessary evil.—§ 5. Dr. Clark's system.—§§ 6-8. Case of Clark *v.* Nicholls.—§ 6. Remarkable and unhappy conflict between Lord Romilly's decision in that case and in Sanger *v.* Sanger.—§ 10. Answer to Lord Romilly's objections to the London attendances.—§ 11. Ridiculous Medical testimony respecting Medical fees collected by the guardians—A New Medical March through Coventry.—§ 12. A veterinary surgeon or cowleech would often claim higher fees.—§§ 13-16. A low fixed tariff not adapted for young ladies at schools or elsewhere—The cheap "contract" or "farming" system inapplicable, unwise, and perilous—Suitable only for "Dotheboys' Hall."—§§ 17-20. Reasons for supplying medicines to Eva Sanger—Physicians may compound as well as prescribe—Laudable example of an eminent London physician . . 103

CHAPTER XIII.

§ 1. Journeys to Worthing and Brighton.—§ 2. Insolent observation of the "Daily News."—§ 3. Consultation before the journeys with the acting guardian and solicitor—Proposal approved.—§ 4. Dangerous condition of the child—Penal consequences of death from neglect—Manslaughter or Murder?—§ 5. Journeys to Brighton—Letter of 24th July unanswered—Acting guardian commits a contempt of court, and gives no instructions—Danger of the patient's relapse.—§ 6. Reasons for not employing a local practitioner.—§ 7. Charges reasonable.—§ 8. Mileage rate of payment to Physicians—Cases before the Masters in Lunacy—"Bryant *v.* Johnson"—Dr. Macloughlin's case—War amongst the judicial deities.—§§ 10, 11. Quotation from a leading Medical Journal.—§ 12. Serious questions requiring solutions 114

CHAPTER XIV.

§ 1. Item of forty guineas.—§ 2. Silly mistake of the "Daily News."—§ 3. Distracted state of the family.—§ 4 Unprotected condition of the child—Is a Physician to act as a good citizen or not?—§ 5. Evidence from depositions and letters—Lord Romilly's permissive order in favour of the mother—Mr. Serjeant Atkinson's warning letter of May 30th, about dismissal.—§ 6. Amount of trouble implied in the charge.—§§ 7, 8. Suitable remarks on Lord Romilly's liberal offer to "give him something."—§ 9. Quotation from a leading Medical Journal.—§ 10. Extra-professional charges allowed in "Bryant *v.* Johnson."—§ 11. Protest against the wrongful disallowance of the item 121

CHAPTER XV.

§§ 1-6. Singular statement of Lord Romilly as to Medical charges and threatened special arrangements with Medical men.—§ 7. Who is the anonymous correspondent of the "Daily News?"—§§ 8, 9. What is meant by the phrase "Effectual protection of the Court of Chancery?"—What good was it to Eva Sanger?—§§ 10-12. Rights and duties of Medical men—In Medical matters they should be free from dictation or coercion—They must guide Judges instead of being guided by them.—§ 13. Other strange hallucinations of "Altera Pars."—§ 14. Vindication of Dr. Clark's conduct in not abandoning the sick child until lawfully dismissed . . . 128

CHAPTER XVI.

§§ 1-3. Unsatisfactory state of the law in relation to Medical charges and orphan wards.—§ 4. General Medical council.—§§ 5, 6. Appointment of Select Parliamentary Committee, or Royal Commission, proposed.—§ 7. Criteria, or Tests of Medical Charges.—§§ 8-11. Legal qualifications and professional status of the practitioner.—§§ 12, 13. Nature of the malady of the patient.—§§ 14, 15. Distance between the residence of the Medical attendant and that of the patient.—§§ 16-18. Extent of work done and time occupied.—§§ 19-21. Value of services rendered.—§§ 22-26. Pecuniary resources of patients.—§ 27. Special circumstances.—§§ 28-40. Suggested Tribunal for Medical Accounts—Appointment of Medical Assessors or Taxing Masters recommended.—§§ 41-49. Suggestions for amending the law in relation to wards of Chancery . . 139

CHAPTER XVII.

§ 1. Retrospect.—§§ 2-9. Short summary of facts.—§§ 10-14. Conclusion 160

APPENDIX—Affidavits p. 166
Sir Wm. Jenner, Bart. *ib.*
Professor J. Russell Reynolds 167
Sir Wm. Fergusson, Bart. *ib.*
John Foster Reeve, M.D. 168
John Rees James *ib.*
Wm. J. Collins, M.D. 169
Thos. Browning Smith, M.D. 170
Benjn. Brogden Orridge 172

INTRODUCTION.

THE objects I have in view in publishing this little treatise are threefold:—

I.—In the first place, I wish to explain and to vindicate my friend's character and his professional conduct as the medical adviser of the young ward of Chancery, Eva Sanger, both of which have been most unjustly impugned or called in question, in consequence of the proceedings and the published reports connected with the recent case of "Sanger *v.* Sanger."

II.—In the next place, my object—and, I may add, my primary object, in comparison with which every other consideration sinks, in my estimation, into almost complete insignificance—is to invite the attention of medical men and the public to the various "Medico-Legal Questions" which the judgment of Lord Romilly in that case seems to me to involve—questions of high social import, touching the reciprocal rights, duties and responsibilities of every ward of Chancery, every guardian, every "next friend," every schoolmistress, and every medical man in the kingdom, to whom the care and custody of wards of Court may be confided. Some of the grave legal, medical, and social questions arising in connexion with that judgment of Lord Romilly may, I think, be thus classified:—

(1). In the particular instance of the little girl Eva Sanger, was it the duty of her schoolmistress, or of her guardians, or of her "*next friend*," to provide proper medical aid when she had lost her home and her natural protector, and became alarmingly ill[1] at a London boarding-school?

(2). What, again, are the rights, duties and responsibilities of the medical man who is intrusted professionally with the care of a patient like Eva Sanger?

(3). Do not exceptional cases sometimes arise in which medical practitioners are bound to remember

[1] See pages 18 19, 21.

the *dictum* of the Scotch judge,[1] that it is not enough for them to perform strictly their professional duty, but that they ought, when needful, to act "*as good citizens*" also?

(4). When the persons having the custody and care of a ward of Court, who is dangerously ill, will give no directions and undertake no personal responsibility on her behalf, and when the medical man is left to act without any instructions, would it be consistent with his calling, or with his duty as "a good citizen," to abandon the sick child to her fate? Or should he not rather attend her with increased zeal and assiduity, always taking care to make known, through the proper channels, all that he does, and all that transpires in relation to his attendance upon such child? And, whether he is paid for his services or not, let me ask, in what other way could he better manifest his sense of professional responsibility, or better perform the part of "a good citizen?"

(5). What are the rights, duties, and responsibilities of guardians,[2] appointed by the High Court of Chancery, when wards of that court possessing fortunes are stretched on the bed of sickness, and "it is thought that they have only a few hours[3] to live?"

(6). And what are the rights, duties and responsibilities of the next friend or *prochain ami*[4] of an infant plaintiff in a Chancery suit? Is the "next friend" expected to see that the guardian, the schoolmistress, the medical attendant, and all others having charge of a sick child, perform their duties faithfully and efficiently? Or is it only requisite, after plunging the minor and the estate into Chancery, that he should take care that the law proceedings go on rapidly and correctly,[5] with, perhaps, a contingent liability on his part to pay the law expenses in case the minor's property should be found inadequate?

(7). Can the court of Chancery, in the exercise of the jurisdiction delegated to it from the Crown as "parens patriæ,"[6] so totally extinguish all the natural rights of an English mother over her children, that she may be debarred from even obtain-

[1] See page 137. [2] See pages 12, 13. [3] See pages 20, 25.
[4] See pages 10, 19, 25, 36, 116, 133. [5] See page 10. [6] See page 10.

ing information as to the state of their health or the place of their residence,[1] or from interposing, under any circumstances whatever, when they may be in urgent need of protection? And can this happen when, perhaps, the only function left to her to perform would be to close the eyes of a dying child?[2]

(8). Does the law of England allow the physician in attendance upon an orphan ward to be insulted and obstructed whilst he faithfully discharges his professional duties—I might say, his sacred functions—by a schoolmistress, or by a guardian appointed by the court of Chancery? And, if so, should not a law so shameful be repealed?

(9). Is it lawful or seemly that such persons should dictate to a physician as to the mode of treatment to be adopted, or take upon themselves to say whether frequent professional visits are essential or not? When the life or the death of a patient may tremble in the balance, is it to be expected that a medical man will submit to be "pestered with a popinjay?"[3]

(10). Or does any noble and learned equity judge suppose that, because a bricklayer or builder is ready to send in beforehand a written estimate of the time and manual labour required for a given work, a physician can do likewise in such a case as Eva Sanger's? Even if the plan were practicable, can it be supposed that the latter would degrade the order to which he belongs to the level of a mechanical trade, by allowing his discretion, his freedom of action, his knowledge, his skill, and, above all, his professional repute, his experience, to become the subject of "a special arrangement,"[4] or written contract, to be settled by a chief clerk in the chambers of a judge? And, if such a thing could be done in the case of medical men, are there not more cogent reasons why the same system should be applied to the emoluments of that other honourable profession, by means of which the Master of the Rolls attained the high judicial dignity which he now sustains? And what would the Master of the Rolls think of such a proposition?

[1] See pages 14, 18. [2] See page 26.

[3] HENRY IV., 1st Part, *act* 1., *scene* 3. [4] See pages 128, 132.

(11). On the contrary, is it not a matter of public social necessity that the discretion of the physician should not be fettered? Is it not especially necessary that he should act freely and independently, according to the best of his judgment, when treating an unprotected ward of Chancery; but always subject, of course, to the legal liability of being dismissed, and even punished, if he should in any way exceed, or abuse, or neglect his duty or his privilege?[1]

(12). Instead of yielding to any dictation on the part of schoolmistresses, guardians, or others, is it not the plain duty of the medical man to resist every such improper interference? Instead of *receiving*, is it not his business to *give*, orders as to the medical and general treatment of his patient, which those who are in charge can only disobey at their peril? And ought they not to be firmly bound by stringent rules of law, as they certainly are by those of humanity, and of good conscience, to follow up conscientiously the directions and the advice they receive? And what excuse can they properly offer for disobedience, except only that they are prevented because the property of the sufferer is insufficient?

(13). When, in a doubtful case, where the life of a child is in jeopardy, the physician finds that his instructions and admonitions are disregarded, what ought he to think? And what ought he to do? Is it not his imperative duty to warn the schoolmistresses and the guardians that, by means of culpable negligence, they may be placing themselves upon the brink of a precipice? And if they should remain deaf to his warnings, ought he not to be encouraged to bring their conduct, and the circumstances of the case fully under the notice of some competent legal tribunal?

(14). If the law of England, in its existing state, makes no provision for such an emergency, ought not a defect so glaring to be supplied immediately?

(15). And if not supported by the law of the land, how can the public reasonably expect that medical practitioners, unless they are perfect philanthropists, will ever undertake the charge of such perilous

[1] See pages 130, 137.

cases? At any rate, will the judgment of the Master of the Rolls afford them any encouragement?

(16.) In the particular instance of the little girl Eva Sanger, was not Dr. Clark legally bound to visit her, so long as her dangerous malady remained uncured? or, at least, until dismissed by competent authority? And, if he had withdrawn of his own accord, what would his brethren have said of his conduct? Moreover, if through his want of skill, or his negligence, or his gross inattention to her welfare, she had died or sustained further bodily injury, might he not have been held civilly or criminally responsible for malpractice or *mala praxis*?[1]

(17). Can it be contended that the schoolmistress and the guardians were justified in disobeying, in May, 1865,[2] the advice given by the Physician in Ordinary of Her Majesty, and by Dr. Clark himself, that Eva Sanger should be removed from the London boarding-school to the pure, fresh air of the country?

(18). Can the paltry plea of "saving expense,"[3] which was then put forward as a reason for their rude, unthinking disobedience of the physician's orders, be regarded as any legal justification of that perilous act? And, in those days when Lord Eldon presided over the court of Chancery, would he have allowed mere pecuniary considerations to be thus placed in the balance with the imperious duty of saving the life of an orphan ward possessing ample pecuniary resources? Is it for the interest of the ward that any man guilty of such lamentable want of judgment should remain the guardian of an orphan ward?

(19). Still further, let me ask if Eva Sanger, when at Worthing[4] or at Brighton,[5] had been left without medical aid, and her death had resulted from such gross, such wilful neglect, who would have been held morally or legally responsible?

(20). Who will venture to point out at what stage of her illness Dr. Clark could have liberated himself honourably from all sense of responsibility towards that unprotected orphan child, without violating the duty imposed upon him by law, or the moral obligations of "a good citizen?"

[1] See pages 36, 38. [2] See pages 31, 32. [3] See page 136.
[4] See pages 28, 116, 137. [5] See pages 41, 42, 116, 137.

(21). Remembering, also, that by the law of England every guardian appointed by the High Court of Chancery stands *in loco parentis*,[1] and becomes the temporary parent of his ward, we may well ask whether the acting guardian and uncle of Eva Sanger was justified in allowing his solicitors to dismiss Dr. Clark in December, 1865,[2] when the malady of the delicate child of his deceased brother was still in existence? and, as far as we know, without providing her with any other medical adviser; and, certainly, without requesting him to furnish such medical adviser with any particulars of her case? Would any father, loving his daughter, have acted in such a way?

(22). If at any stage of her illness the little girl had died through the neglect of her guardians to provide for her proper medical assistance, would they, in point of law, have been held criminally responsible, and, if so, for what offence? And, if not, why is the law of England allowed to remain in such a disgraceful state?

(23). And are all schoolmistresses and guardians of wards of Court in England to be left at liberty, under the assumed shelter of the recent judgment of the Master of the Rolls, to treat all other orphan wards—of whom his lordship says there "are so many"[3]—as well as their medical attendants, in the same way as the child Eva Sanger and Dr. Clark were treated by her guardians?

These are some of the many topics which occupied Dr. Clark's thoughts whilst the little girl Eva Sanger was under his care. With much diffidence I now ask my readers to take them candidly into consideration, as they peruse the pages of the narrative of facts which follows. Some of the points raised may require the intervention of the Legislature.

III.—I shall have occasion to discuss at some length various questions as to medical charges in exceptional cases. I shall also offer a few observations as to the unsatisfactory nature of the only existing tribunals to which such matters can now be referred for legal adjudication in those instances—happily, very few in

[1] See pages 12, 13. [2] See page 48. [3] See pages 92, 128.

number—in which medical practitioners are compelled, by peculiar circumstances, to resort to the law for the redress of the wrongs or the recovery of the rights of themselves or their patients. In maintaining his right to his full fees as the medical adviser of Eva Sanger, was not Dr. Clark acting as much within his duty as when he attends a poor man, or a poor child, without any fee?

IV.—Many kind and valued friends have asked him why he should make a sacrifice of time, of money, and, perhaps, peace of mind, with no other apparent view than to engage in an acrimonious discussion that is entirely repugnant to all the tastes, habits, and pursuits of his past life? "Why," they ask, "should you do all this?"

His answers are very plain, simple, and, I trust, satisfactory:—

(1). In the first place, he must not sit still or be silent when his professional reputation is on trial. Nor must he forget that, as an act of respectful duty towards those very eminent medical men who supported him by their sworn testimony, he is bound to come forward and show that he is not altogether unworthy of the honour they conferred upon him, when they allowed their distinguished names to be associated in this matter of Eva Sanger, with that of so humble a member of the profession as himself.

(2). In the next place, although the decision of Lord Romilly is against him, he still wishes to say, that his mind has been greatly relieved by the mere fact that the case of his patient, the orphan ward of Chancery, has been brought before his lordship and the public. Nor does he abandon the hope that, whatever may be the result to himself individually, other orphan wards of Chancery, and his brethren, may yet derive some little benefit from the discussion it may occasion. And, if so, "his bad beginning may still make a good ending."

(3). And, again, he feels that he ought, in accordance with the pledges he has publicly given to his brethren, to set forth a full statement of the facts, in the hope of satisfying them that, whilst doing his duty towards his young patient, he did not forget that he had also to sustain the honour, the rights, and the interests of the profession to which he belongs.

LASTLY,—He is glad to have an opportunity of acknowledging that, throughout his attendance upon the child, in 1865, and from thence down to March, 1869, he scarcely ever thought it prudent to rely on his own unaided judgment. But, finding the case to be one of great difficulty, and surrounded by circumstances almost unprecedented, he took care to consult and act in unison with the advice of legal, medical, and other friends, who were always ready to share with him the responsibility of coming to a decision upon every important question that arose. To those kind and skilful advisers he now, through me, tenders his grateful thanks.

D. R.

POSTSCRIPT.

JUST as this little work is on the eve of publication, the extraordinary case of SARAH JACOBS, "The Welsh Fasting Girl," has occurred. A verdict of manslaughter having been returned against EVAN JACOBS,[1] the father of that unfortunate girl, I am precluded from discussing the subject fully whilst criminal proceedings are pending. A careful judicial investigation of all the medico-legal questions arising with respect to the responsibilities of the father on the one hand, and the duties of the medical attendants on the other, cannot fail to be deeply interesting, as well as instructive, both to the medical profession and the public. Perhaps also the result of a complete public inquiry will be to solve some of the important queries and arguments I have raised in relation to the case of the orphan ward of Chancery, EVA SANGER. At any rate, however, the sad story of this poor unprotected "Welsh Fasting Girl," in its present aspect, although presented to us from a different point of view, seems to afford another striking illustration of the urgent necessity of providing better legislative protection for helpless patients.

[1] *Times*, 24th of December, 1869.

D. R.

BARNARD'S INN,
December, 1869.

LAWYERS AND DOCTORS:

ORPHANS AND GUARDIANS,

ETC. ETC.

CHAPTER I.

§§ 1-3. MEDICAL EDUCATION AT EDINBURGH.—§§ 4-6. UNJUST ACCUSATIONS FOUNDED ON THE CASE OF SANGER *v.* SANGER.—§§ 7, 8. APPEAL TO THE MEDICAL PROFESSION AND THE PUBLIC.

"My dear, dear lord,
The purest treasure mortal times afford
Is spotless reputation; that away,
Men are but gilded loam or painted clay."
RICHARD II., *act* i., *scene* 1.

"The use of character is to be a shield against calumny."
BURKE.

"The best test of reputation is a man's whole life."
AMES.

(§ 1). IT is now nearly thirty years ago since Dr. Clark became a medical student at Edinburgh. During the long period which has since elapsed, he has devoted himself to the practical working out of those rules and principles of which he acquired the knowledge from the very eminent professors under whom he studied, including among them the honoured names of CHRISTISON, of SIMPSON, and of SYME.[1]

(§ 2). Several of the able men from whose lips he gathered sound instruction and advice have, alas! been removed by death. But he hopes that the lessons they taught are still indelibly fixed in his memory; lessons of truth and wisdom that no lapse of time can change; which are the fruitful source of solace and of aid in the hour of trial, and afford a constant rule of conduct in the various difficulties and emergencies of professional life.

(§ 3). Animated by such thoughts, with what mingled feelings of pride and pleasure may every Edinburgh student regard his early training! with what earnestness should he

[1] He graduated as M.D. in 1843, and in the same year he became a Member of the Royal College of Surgeons of England.

strive, however humble or obscure, to guard from taint or blemish the academical degree[1] which crowned his labours! and with what just indignation should he resent the smallest hint or insinuation that he has ever lost sight of the bright examples that were there set before him,[2] by reducing his noble calling to the level of a trade! Yet an accusation of that odious character has recently been brought against Dr. Clark in the columns of at least one of the daily newspapers,[3] in connexion with the case of Sanger *v.* Sanger. On investigation, however, it will be found, I trust, both unfounded and frivolous; so unfounded, indeed, that it cannot call even a momentary blush of shame into the cheek of a friend, and so frivolous that it may be easily scattered to the winds.

(§ 4). The firmness he displayed in bringing the case of the young ward of Chancery, Eva Sanger, before a judicial tribunal, naturally exposed him for many weeks to a sharp volley of hostile criticism. In some quarters it was wrongly supposed to arise from his fondness for litigation. By others his conduct in attending the child at all was smiled at and spoken of as an act of weakness amounting to knight-errantry. Another class of individuals, supposed to be versed in "the ways of the world," were of opinion that his charges must have been unfounded or excessive, simply because Lord Romilly, as Master of the Rolls, was against him. But have they forgotten that, by reason of the frailty of judges, the decrees of legal tribunals may often be as capricious, contradictory and mysterious as the decrees of fortune?[4] At any rate, those critics must, I think, have been unduly influenced by the vulgar belief that in law proceedings, as in life, success, and success only, is the infallible criterion of what is true and what is just in human conduct and affairs. It would follow, according to that degrading theory, that *the conduct of the losing party can never be right*;—a cold-hearted

[1] Two great luminaries of the law in modern times were medical students at Edinburgh—one of them the distinguished statesman, orator and lawyer, Sir James Mackintosh; the other, Henry Bickersteth, Lord Langdale, the immediate predecessor of Lord Romilly as Master of the Rolls.

[2] Dr. Clark can never forget the touching terms of admiration with which Sir James Y. Simpson, in his first course of lectures, referred to his predecessor, Professor Hamilton, who, when specially summoned to attend a lady of the highest rank in Scotland, refused to quit the bedside of an indigent woman, whose dwelling was in the poorest district of Edinburgh, simply because he saw that her life was in jeopardy.

[3] *Daily News*, March 17.

[4] In 1864, the same learned judge pronounced, *in Dr. Clark's favour*, a judgment as to medical charges which is in direct conflict with the opinions recently expressed by him in Sanger *v.* Sanger. (See pp. 106-108).

dogma, "the offspring of muddy understandings," which contradicts the teachings of daily experience, and is, moreover, subversive of the fundamental rules of our code of equity law, which enables every dissatisfied suitor to appeal from an erroneous decision to a higher tribunal.[1]

(§ 5). As if to pollute justice at its source, by poisoning the mind of the judge and the public against his claim, in some of the daily London newspapers[2] the character and conduct of Dr. Clark were vilified in no measured terms, *before the arguments of his counsel were concluded.* It would seem that the publication of such garbled and defamatory matter, *pendente lite*, was a contempt of the authority of the Court of Chancery, which some judges would have punished by ordering the guilty parties to stand committed to prison.[3]

(§ 6). In one remarkable instance an editor forgot all sense of propriety—I am unwilling to use a harsher phrase—by permitting an unknown writer to occupy the columns of his journal and gratify personal malevolence by assailing Dr. Clark under the safe and convenient but cowardly shelter of a mask.[4] Before I saw those letters in the *Daily News* I had every reason to believe that the responsible managers of every respectable newspaper in London considered it their primary duty to refrain from prejudicing the even course of justice, and especially to conform to the decent usages of civilized society, by treating all anonymous communications affecting individuals engaged in litigation with well-merited contempt. In all the published reports Dr. Clark was placed in a false position. It was said, for instance, that he sued the guardians after a fair offer had been made to him, and that he brought the case into Court merely to recover the amount of his professional fees; whereas he did not sue the guardians at all, but wholly abandoned his right of suing, on the faith of a promise which was perfidiously broken. Nor was any offer made to him until many months after the case, through their refusal of arbitration and breach of faith, had drifted into the chambers of the Master of the Rolls,

[1] Lord Romilly himself, in giving judgment in Dr. Clark's case, said he "had no doubt the matter would go further." (See page 92).

[2] *Morning Herald* and *Standard*, March 15. I am told that the compiler of these reports was Mr. John Chester, the stepson of the acting guardian of Eva Sanger, and one of the counsel retained against Dr. Clark before the Master of the Rolls! (See pp. 87-91).

[3] See page 89.

[4] Two letters signed "Altera Pars" appeared in the *Daily News* of March 20 and April 1, respecting which I shall have more to say anon. I am informed that those letters are from the pen of the same Mr. John Chester. (See pp. 90, 91, 132, and 133).

involving heavy law expenses, which they refused to satisfy. Nor did he insist upon any particular scale of payment, but only desired that the question of amount should be left to the impartial decision of competent medical arbitrators. By these and similar misrepresentations the claim was degraded to the level of a paltry squabble respecting the amount of a doctor's bill of charges for attending an ordinary patient under ordinary circumstances. Deceived by the imperfect and distorted accounts which appeared in the daily newspapers, even the editor of a leading medical journal [1] called upon him for his "defence," and stated, that "for his own sake it ought to be speedy and complete." In short, it was very mortifying to find that, in scarcely one instance,[2] his critics and censurers were aware of the magnitude and vital importance, morally, socially, and legally, of the various questions which his application involved, and which alone compelled him, whatever might be the result, to bring the matter, as a public question, and on public grounds, before the Master of the Rolls, for legal adjudication.

(§ 7). As regards old friends and the majority of his patients, they would no more believe that he had been guilty of exaction or extortion in dealing with an orphan ward of Court, than that he had been arraigned for some criminal offence at the Old Bailey. They know also that it is quite foreign to his nature to embark voluntarily in a bitter and unseemly controversy; indeed, his earnest desire has ever been to live peaceably with all men. On the other hand, he feels that his professional reputation ought to be as dear to him as life itself; and, considering the nature of the charge publicly brought against him, the members of the profession may reasonably look for explanation from him. This task I, as his former legal adviser, have readily undertaken. And it being quite impossible to discuss so grave a matter at sufficient length in the columns of a newspaper, I have determined to publish an authorised statement of the facts in a separate form, and submit the whole to the impartial judgment of the public. They will thus be enabled to say whether Dr. Clark has been rightly described as *"a devourer of the estates of orphans;"*[3]

[1] *Lancet*, March 20. But in a subsequent number of that valuable journal the editor wrote as follows:—"Dr. Clark takes high ground, and expects, when all the facts are published, to obtain the support and approbation of his brethren. The facts, we are told, will not be long withheld, and we confidently appeal to our readers to suspend their judgment in the matter."—*Lancet*, April 3.

[2] The *Daily Telegraph*, however, in a leading article of much power and discrimination, showed that, beyond the mere money question, there were really grave issues involved in the conflict.—March 17.

[3] *Morning Herald* and *Standard*, March 15th and 18th. (See page 88).

or whether, on the contrary, that odious epithet does not rather apply to those who, by their conduct towards him, and their refusal of all offers of friendly arbitration, rendered an application to the Court of Chancery unavoidable, and so involved the young wards of Court in law expenses larger in amount, as I believe, than the whole sum claimed by him for no less than eleven months' unwearied and successful services.

(§ 8). Not in anger or revenge, but acting simply in accordance with his published pledges,[1] Dr. Clark will not rest until his professional conduct on the one hand, and the acts and proceedings of the guardians of the young ward of Chancery, Eva Sanger, on the other, have been most completely sifted. The part he has acted has been in open day. He has nothing to conceal. The conflict is not one of his seeking; but, making some allowance for errors of judgment and the peculiarity of his position, the result, he hopes, will be to show that, instead of censure, he may justly claim sympathy, support and approbation.

[1] *Lancet*, March 20th; *Medical Times and Gazette*, March 20th; *British Medical Journal*, March 20th; and *Daily News*, March 19th and 30th.

CHAPTER II.

§§ 1-5. THE LATE MR. WILLIAM SANGER—HIS WILL—HIS WIDOW AND TWO CHILDREN—THE SOLE EXECUTOR AND TRUSTEE—HIS SOLICITOR.—§§ 6-8. THE FORTUNES OF THE CHILDREN.—§§ 9-12. FAMILY FEUDS—THE CHANCERY SUIT OF SANGER *v.* SANGER—THE NEXT FRIEND OF THE INFANTS.—§ 13. THE INFANTS BECOME WARDS OF COURT.

> "Fame, if not double-fac'd, is double-mouth'd,
> And with contrary blast proclaims most deeds;
> On both his wings, one black, the other white,
> Bears greatest names in his wild, airy flight."
>
> MILTON—*Samson Agonistes*, l. 971-74.

(§ 1). Very shortly after he became, at the end of June, 1862, a resident at No. 3, St. Mark's Square, Regent's Park, Dr. Clark was introduced by a professional friend to an aged lady named Twigg, who kept a respectable boarding-school for the education of young ladies. Her establishment, called Macclesfield House, was situate in Avenue Road, St. John's Wood, at a distance of about two miles from his place of abode; and among her pupils were the two young ladies named Sanger, who afterwards became his patients, and whose cases recently formed the subject of investigation and discussion before the Master of the Rolls in the Chancery suit of "Sanger *v.* Sanger."

(§ 2). His young patients, Lilly Laurence Sanger and Eva Sanger, were the daughters of the late Mr. William Sanger, who practised for some years as a solicitor in the Temple, and died on the 21st February, 1857. Of the nature of his practice it is enough to say that he is reported to have realised from it an income ranging from three to four thousand pounds per annum.

(§ 3). At the time of his death he had amassed a considerable fortune, and was enabled to make a will by means of which a liberal provision was secured to his widow, Jane Sanger, and the two daughters I have named, who were his only children. Besides leaving a widow and two children, Mr. William Sanger had two brothers and a sister, who survived him.[1] The elder of these brothers, Mr. Thomas Sanger, was appointed by the will sole executor and trustee, and I believe he has had the absolute

[1] "Besides myself another brother and a sister of the testator survived him and were living throughout the period of the illness of my two nieces in 1865." (*Mr. Thomas Sanger's Affidavit*, 7th July, 1868, *par.* 2.)

control and management of the property of his deceased brother. Of the other brother and the sister, I can only say that Dr. Clark never saw them, or even knew of their existence, whilst he was in daily attendance upon Eva Sanger, in March and April, 1865. From this it is not perhaps unreasonable to infer that some family estrangement existed; or at any rate they could not have felt much interest in the welfare of their sick niece.

(§ 4). Nor can I supply much information respecting the previous history or pursuits in life of Mr. Thomas Sanger, who unites in his own person the functions of sole executor and trustee, and acting guardian. I have no wish to investigate the heraldic quarterings of the Sanger escutcheon. More than once, indeed, during the hearing of the case before the Master of the Rolls, the subject was referred to by the leading counsel; but the learned gentleman retained on behalf of the acting guardian preserved a significant silence. Of one thing I feel quite certain: he was not educated for the medical profession. On the contrary, judging from his conduct towards Dr. Clark, I should say that in former days he ought to have belonged to that useful body of men who take St. Crispin as their model and patron, and to one of whom Apelles of old gave the sensible admonition—

"Ne sutor ultra crepidam."

At any rate I think that he would have acted wisely if he had conformed to that maxim, not yet obsolete or inapplicable, though ancient, instead of disputing and disobeying the advice of Sir William Jenner[1] and Dr. Clark, and interfering with the latter in the discharge of his duty as medical adviser of his young niece. Yet, taking into account his behaviour towards the Doctor, I should say that his notion of men and of things must be even more mean and contracted than those of the famous "sutor" of the Greek artist; for if he values a masterpiece of art in the same ratio as he does medical science, it is not at all unlikely that his estimate would be based, not upon the skill and genius of the artist, but upon the mere money value of the wooden stretcher upon which it is painted, and the trade price of the canvas, the paint and the oil employed in its production! At any rate he succeeded in leaving a strong impression upon Dr. Clark's mind that in his judgment the saving of expense may often be of greater consequence than the saving of the life of a patient; and altogether his manner, his language, his tone of thought, and the whole tenor of his conduct, remind me of the graphic description given by Edmund Burke of a certain class of individuals who, in dealing with grave and difficult questions, exhibit only "the character and conceptions of pedlars." They

[1] Physician in Ordinary to Her Majesty the Queen.

always act, and suppose others to act, as if nothing is worthy of their care but money.

(§ 5). To show the various antagonistic influences under which Dr. Clark was called on to act, I shall have occasion[1] to speak of Mr. Alfred Godwin, the solicitor of the guardians of the young wards of Chancery. That gentleman, I am informed, was for many years managing clerk, and succeeded to the practice of the late Mr. Sanger. Yet, however, tempting the theme, I shall say nothing concerning him, or his sayings and doings, except so far as may be needful to explain the circumstances which compelled Dr. Clark to bring the case of Eva Sanger before the Court of Chancery and the public.

(§ 6). Of the nature and extent of the property of the late Mr. Sanger, it is not very easy to obtain accurate information. For the purpose of proving the will, the personalty was sworn under £30,000; which, of course, would not include any landed or house property of which he may have been the possessor. A large portion of the assets consisted, as I am informed, of outstanding mortgages, book debts and law costs, the amount of which would, of course, very much depend upon the mode in which they were realised,—and might prove to be larger or smaller in amount, according to the skill, the zeal and the integrity of those to whom the administration of the estate had been confided.

(§ 7). Notwithstanding the peculiarity of the case, I shall not refer to the opinions expressed to Dr. Clark by Mr. Godwin and by Mr. Serjeant Atkinson, the co-guardian, or by Mrs. Sanger, the mother of the children, respecting Mr. Thomas Sanger, and his conduct as the sole executor of the will of his late brother. Nor does it fall within my province, even if it were necessary or material, to inquire minutely into the former position in life of that gentleman. Nor into the nature and extent of his reputed opulence. Nor whether such opulence was acquired before or after his brother's death. Nor as to what would become of the expectant fortunes of the young wards of Court, if they happened to die under the age of twenty-one years. Yet I frankly own that statements were made to Dr. Clark at the time, in reference to these and kindred matters, which very materially influenced his judgment and his conduct as the medical attendant of Eva Sanger.[2]

[1] See pp. 59-64.

[2] In reference to this subject I may observe that the professors of the law, guided by certain fixed rules of evidence, reject as mere "hearsay," and therefore irrelevant to the cases they undertake, everything that is not susceptible of strict legal proof. The physician, however, is required in all dangerous cases, to pursue quite a different system of tactics and policy. The *special malady* of the patient, and the best mode of treating it, will of course be the *first* subject of his thoughts. But, afterwards, nothing that

(§ 8). Waiving discussion on such points, I need only say that, under unfavourable circumstances, and in spite of the heavy burden of a costly Chancery suit, the young ladies are entitled under their father's will to a fortune of twelve or fifteen thousand pounds each, subject, as to part of the property, to their mother's life interest, and as to all of it, to the contingency of living to attain their majority.[1] The elder daughter has already reached that age; but the share of her younger sister, Eva, is still contingent, and if she should live, as I trust she may, to enjoy her expectant fortune, it will certainly be owing, under Divine Providence, to the successful efforts that were made for her in 1865, when she was at the boarding-school of Mrs. Twigg, at St. John's Wood, and in such imminent peril.

(§ 9). But to return to the facts of the case. To explain what I have stated, it is necessary to mention, that in less than twelve months after the death of Mr. William Sanger, family disputes and disagreements arose, and, as usually happens on such occasions, the estate was plunged into Chancery. From that time until now the family of Sanger have been in a chronic state of confusion and discord. We always find that domestic broils, when fanned into a flame by costly litigation, engender the most bitter hatred and animosity.[2]

(§ 10). For the information of those who are happily

can concern the *general bodily or mental well-being* of the sufferer, will be regarded as irrelevant. On the contrary, he will carefully note every appearance or symptom from day to day, and be always on the watch for any special complication or emergency that may be likely to arise. In truth, the eyes and the ears of the medical attendant must never be idle. Every look, gesture or word of the patient or his attendants may be suggestive of thought and worthy of notice. The physician will take into account all the surrounding circumstances. If obstructed in the performance of his duty, or if the advice he gives be systematically evaded or neglected, he will generally withdraw, and, at the same time, take some step to protect, if possible, the patient, as well as to liberate himself from personal responsibility. Or if the remedies he prescribes should fail to produce the anticipated result, his vigilance and his suspicions will be alike aroused. The language, the habits, the character, the conduct, the condition in life, nay, the inmost feelings and motives of those who surround the bed-side or have charge of the patient, may then very often form the subject of rigid scrutiny. In short, whenever the life of a patient, whether young or old, is at stake, it is not unlikely that a variety of facts and circumstances which a lawyer would discard from consideration as mere hearsay or gossip, may considerably influence the judgment, and have a practical bearing on the remedial, precautionary, and other measures, of the medical practitioner.

[1] "The young ladies will eventually have £12,500 each. At present they have £7,500 each in round numbers. This present reduction is caused by an annuity to the widow. On the death of the widow it will revert to them."—*(Mr. Alfred Godwin's Deposition*, 18th June, 1868.)

[2] "There needs no more to the setting of the whole world in a flame than a quarrelsome plaintiff and defendant."—*L'Estrange.*

ignorant of legal technicalities, I may explain that the High Court of Chancery, which administers the peculiar system of law known in this country as Equity, exercises prerogative and exclusive powers over the custody, the guardianship, the education, the maintenance, the advancement, the property, and the marriage of infants. For nearly 200 years that Court has assumed such jurisdiction, ostensibly as the general delegate of the Sovereign, acting as *parens patriæ* for the protection of those who are unable to take care of themselves, although possessing the means of maintenance.

(§ 11). On account of their supposed want of discretion, and their inability to make themselves liable for the payment of the costs of law proceedings, infants are not allowed to maintain suits in Chancery for the recovery of their rights or the redress of their wrongs, without the assistance of some other person.[1] But, as if by way of special favour to infants, the Court permits any person, whether a relative or not, to originate suits on their behalf, and whoever thus undertakes their cause is styled their *next friend* or *prochain ami*,[2] and becomes responsible to the Court for the propriety of the suit in its institution and progress, and—what is perhaps far more important in the estimation of lawyers,—for all the costs and expenses that may be incurred.[3]

(§ 12). The gentleman who undertook the responsibility of acting as *next friend* or *prochain ami* of Dr. Clark's patients, the infant daughters of the late Mr. Sanger, was Mr. Henry Alexander Newell, who is I believe a medical practitioner. With his assistance as "next friend," a bill was filed some time in 1857, and thus the Chancery suit of Sanger *v.* Sanger was commenced for the administration of the estate of the late Mr. Sanger, in which suit the infants Lilly Laurence Sanger and Eva Sanger were the plaintiffs, and the sole executor and trustee, Mr. Thomas Sanger and the mother, Mrs. Sanger, were the defendants.[4] According to the uniform course of the Court of Chancery, which has always been the law of that Court,[5] upon the institution of the suit of "Sanger *v.* Sanger," the plaintiffs, the infants, became what is inappropriately termed "wards of Court:"—became such wards by the very fact of the institution of the suit.[6]

[1] Daniel's Chancery Practice, vol. i., p. 74.

[2] Bla. Com., vol. i., p. 464.

[3] Daniel's Chancery Practice, vol. i., p. 75.

[4] Subsequently, Mr. Serjeant George Atkinson was also made a defendant, after the appointment of his wife as one of the guardians of the children, and his own appointment as one of the trustees of the property of the infants.

[5] *Cursus curiæ est lex curiæ.*

[6] Lord Lyndhurst, in Johnstone *v.* Beattie, 10 Clarke & Fin. 42, 84, 85.

(§ 13). Thus, by the simple act of filing a "*Bill of Complaint*," the fortunes, and consequently the care and custody, of Lilly Laurence Sanger and Eva Sanger were placed under the protection of the Court;—and, in theory at least, they became objects of its peculiar care and solicitude. It should be added, however, that the jurisdiction of the Court of Chancery is never exercised on behalf of infants unless they are entitled to property, and such property moreover must be within the Court's jurisdiction. An orphan child, without property, can never therefore become a ward of the High Court of Chancery. Taking Eva Sanger's case as a specimen, may we not reasonably ask whether that disability is to be considered a gain or a loss to a child?

CHAPTER III.

§ 1. Further Family Dissensions—Appointment of Guardians. —§§ 2-4. Qualifications, Duties, and Powers of Guardians.—§ 5. Children placed at the School of Mrs. Twigg.—§ 6. The Mother forbidden to visit them.—§ 8. Mode in which the Court controls Parental Rights.—§§ 9-13. The Character of Mrs. Twigg and her Establishment.

"The Lord Chancellor is, by right derived from the Crown, the general and supreme guardian of all infants."—*Bla. Com., ed. Warren*, p. 349.

"In answer to an objection that the court should not interpose before the guardians had misbehaved, Lord Macclesfield observed, that *preventing* justice was to be preferred to *punishing* justice. If any wrong steps had been taken which induced the least suspicion of prejudice to the infant, though they might not deserve punishment, yet the court would interpose and order the contrary. This was grounded upon the general power and jurisdiction which this court has over all trusts; and a guardianship was most plainly a trust."[1]—*Viner's Abridgment*, vol. xiv., tit., *Guardian and Ward.*

"The court certainly would regard the feelings of the parent; the court would be anxious that the affection of the children should not be estranged from the parent."[2]—Lord Manners.

(§ 1). Notwithstanding the institution of the suit of Sanger *v.* Sanger, it appears that for some years after 1857, the young ladies were allowed to reside with their mother. As yet, nothing had transpired, I presume, to warrant the interference of the Court with her natural rights. But in consequence, as I suppose, of further family feuds, an order was obtained from the present Master of the Rolls, on the 28th of November, 1861, by means of which the paternal uncle and sole executor and trustee, Mr. Thomas Sanger, and Mrs. Atkinson, the wife of Mr. Serjeant George Atkinson,[3] were associated with the mother as guardians of the children.

(§ 2). By the law of England, a guardian stands *in loco parentis;* and the jurists have therefore defined guardianship to be a temporary parentage of a child whilst under age:—a con-

[1] Duke of Beaufort *v.* Bertie, P. Wms. Reports, p. 705 (Trin. 1721).

[2] Wellesley *v.* Beaufort, Bligh's New Reports, vol. ii., p. 146.

[3] "I am one of the trustees of the will appointed by the Court. My wife is one of the guardians."—*Serjeant Atkinson's Depositions*, 18th June, 1868.

tinuation, in fact, of the parental authority. Hence it follows that the power and reciprocal duties of a guardian and ward are the same, *pro tempore*, as those of a father and a child,[1] which principally consist in three particulars: their maintenance, their protection, and their education.[2]

(§ 3). In appointing a guardian, it is said that the Court of Chancery proceeds upon the principle that the office is in the nature of a sacred trust. A rigid inquiry ought therefore to be first instituted into the character and even the religious tenets of the person who seeks or is solicited to undertake the office. He should be resident in England; and the Court will consider him guilty of a gross contempt of its authority if he should remove the infant out of the realm, so as to be beyond its control and protection. In the case of *De Manneville* the French emigrant, Lord Eldon declared, that "*if the child—a ward of Court—would not be safe, he would not even let it go to Scotland.*"[3] The guardian must, moreover, be moral, solvent, capable, and of *humane character*, and usually of the same religious persuasion as the parents of the infant. It is, above all, his duty to implant in the hearts of the children filial and dutiful feelings towards their parents, "*without which being planted in their hearts nothing else that may be sown there will be likely to produce good fruit.*"[4]

(§ 4). As regards the legal rights and powers of guardians, I believe that the Court of Chancery exercises over them and all other parties having the custody and care of infants the most absolute and unlimited control. Being in fact its own creatures, the Court may modify, restrain or direct their acts, and even remove or suspend them, or appoint other persons to exercise their functions, as may appear to be most beneficial to the infants. And if there be reasonable ground to believe that the children will not be properly treated, the Court will not wait until mischief has been done, but at once interfere to ward off dangers apprehended, upon the principle that *preventing* justice is preferable to *punishing* justice.[5]

(§ 5). But to return to my narrative:—Some months after Mr. Thomas Sanger and Mrs. Atkinson had been associated with Mrs. Sanger in the guardianship, it appears that the young wards were removed from the custody of their mother, and through the recommendation of Mr. Serjeant Atkinson and Mr. Godwin they

[1] Bla. Com., vol. i., p. 462.

[2] Ibid, p. 446.

[3] De Manneville *v.* De Manneville, 10 Vesey, jun. Reports, p. 52.

[4] Lyons *v.* Blenkin, Jacob's Cases in Chancery, p. 257.

[5] Per Lord Macclesfield, in Duke of Beaufort *v.* Bertie, cited with approbation by Lord Eldon, in Wellesley *v.* Beaufort.

were placed under the care of the aged schoolmistress Mrs. Twigg, at St. John's Wood. Subsequently, on the 30th July, 1862, another order was obtained from the Master of the Rolls or his chief clerk, directing that they should remain at her school and be under her charge. Thus the children for the first time in life became separated from their mother—their natural friend and protector.

(§ 6). Dr. Clark has always regarded it as a lamentable feature in the case, that he was compelled to draw aside the veil which should hide from public scrutiny the faults, the frailties and the eccentricities of the mother of these young ladies. Medical men must never pry into or reveal family secrets. He is relieved from all difficulty, however, by the circumstance that many of the facts connected with the misconduct of Mrs. Sanger unfortunately became matters of public notoriety; and in order to explain the peculiar position of the Sanger family when his professional aid was first sought by the schoolmistress, it is necessary to say that, in consequence of such misconduct, she, on the 29th April, 1863, was removed from the guardianship. In fact, she was absolutely prohibited from "*visiting, communicating, or interfering with*" her own daughters, however dangerously ill they might be, without special leave from the Court of Chancery. What a direful calamity, both for her and her children!

(§ 7). From the published reports and the rumours which have reached me, I believe that the Master of the Rolls was perfectly justified in visiting her with this terrible punishment. I take it for granted, also, that his lordship acted in strict accordance with the maxim of Lord Eldon, that "*the interposition of the Court ought not to be put into operation without keeping in view all the feelings of a parent's heart, and all the principles of the common law with respect to a parent's rights.*" I am not, therefore, an advocate or apologist for Mrs. Sanger. Yet it is only right to say, that when her little girl Eva was taken dangerously ill, she manifested the natural feelings of a mother, and the deepest anxiety as to the result, and throughout the whole period of Dr. Clark's professional attendance, she continually made inquiries as to both her children, which he felt it his duty to answer. She often complained to him of what she termed the persecution that was practised towards her by the acting guardian, who, she said, had threatened, within a fortnight after her husband's death, to "*wither her into her grave,*" if she did not comply with his wishes; and that on all occasions he availed himself of every mistake or fault on her side to further his own designs. She said, moreover, that he and the schoolmistress were straining every nerve to implant in the hearts and minds of the children a thorough hatred and detestation of their mother.

(§ 8). If the accusations and statements of Mrs. Sanger had the smallest foundation in truth, there can be little doubt that the guardian, in so acting towards the mother of the wards, was guilty of a serious violation of his duty. Every lawyer and every man with a spark of generous feeling in his breast will agree in saying that it is, or ought to be, the special duty of a guardian to bring up his wards in dutiful obedience to the parents, and, as far as circumstances will admit, according to their wishes. At any rate, believing the question to be one of much social importance, and acknowledging that it had some practical influence upon Dr. Clark's conduct towards Mrs. Sanger during the dangerous illness of her child, I shall quote a few passages from the decisions of some of the most famous Chancery judges in order to exemplify HOW AND IN WHAT SPIRIT THE COURT CONTROLS THE NATURAL AUTHORITY OF PARENTS OVER THEIR CHILDREN.

(*a.*) That eminent Chancellor Lord Thurlow found it necessary on several occasions to separate the person of the child from the parent, always taking care, however, that "*the separation should not have a greater effect than the necessity of the case required; and that the intercourse should be as frequent and full as the causes of separation would permit.*"

(*b.*) Upon the same principle, in the well-known case of the *Earl of Ilchester*, in 1803, Lord Eldon, when depriving the mother, on legal grounds, of the guardianship of her children, remarked that "*this Court looks with great anxiety to the execution of the duty belonging to the guardian, and the attention expected to be paid to the wishes of the natural parent.*" And his lordship added the memorable words: "*It can never end happily but by implanting in the hearts of the children filial and dutiful feelings towards the mother; the best and most important duty imposed upon the guardian by the deceased parent.*"[1]

(*c.*) Again, in 1804, in the case of the French emigrant *De Manneville*, who had married an English lady of considerable property, Lord Eldon, whilst declining, under special circumstances, to commit the guardianship of the infant either to the father or to the mother, declared that he "*should take care that the intercourse both of father and mother with the child, so far as was consistent with its happiness, should be unrestrained.*"[2]

[1] Vesey's Reports of Cases in Chancery, vol. vii., pp. 380, 381. It appears that, in 1837, the same principle was acted upon by the Vice-Chancellor of England (Sir Lancelot Shadwell) in the case of the *Countess of Pomfret*, who had been superseded in the guardianship of her children on account of her second marriage with a Dr. Tharp. (Fermor *v.* Pomfret, *Jurist*, vol. i., page 150.)

[2] De Manneville *v.* De Manneville, 10 Vesey, jun. Reports, pp. 52-56.

(*d.*) So also in 1820, in the case of Lyons *v.* Blenkin, although the plaintiff failed to obtain the custody of his children, who had been separated from him for many years, Lord Eldon used the remarkable words I have partly quoted in a previous page, that their education should be "*rendered subservient to the cultivation of that duty and affection to their father without which being planted in their hearts, nothing else that might be sown there would be likely to produce good fruit.*" [1]

(*e.*) I may also refer to the celebrated case of the Honble. William Long Wellesley (afterwards Earl of Mornington) *v.* the Duke of Beaufort, which finally established the doctrine that the Court of Chancery has authority, for adequate reasons, to deprive the parent of the custody of his children. In that case the father was living in open adultery with the wife of another man, and had encouraged his children in profane language, swearing, and keeping low company, and the whole tenor of his life manifested the utmost profligacy and depravity. Yet, in taking from him his three children, Lord Eldon, in concluding his luminous judgment, said that "*into whose hands soever they might fall, it would be their duty to consult the happiness of the children by allowing filial affection and duty to their father to operate to the utmost.*" [2] The case was afterwards carried to the House of Lords, and the whole subject was again discussed by Lord Redesdale and Lord Manners, whose judgments, affirming the previous decision of Lord Eldon, are models of judicial eloquence and logical reasoning. [3]

(*f.*) I may say further, that in consequence of subsequent legislation,[4] the power of the Court of Chancery over infants is now not less, but much greater, than it was in the days of Lord Eldon. In the case of Warde *v.* Warde, Lord Cottenham, when depriving a father of the custody of his children, and ordering them to be delivered up to the mother, made the following observation :—

"I wish the parties to bear in mind that this is not, as in Wellesley *v.* the Duke of Beaufort, a question as to merely the general jurisdiction of the Court to interfere with legal rights of the father, but that *I have now an absolute authority over the children under seven years of age, and a larger power than the Court then had with regard to children over that age.*" [5]

[1] Lyons *v.* Blenkin, Jacob's Cases in Chancery, p. 257.

[2] Russell's Reports, vol. ii., p. 43.

[3] A great American jurist, in citing Wellesley *v.* Beaufort, observes that "it was accompanied and followed by very profound discussion. The jurisdiction of Chancery, and the fitness of its exercise in that instance, were finally established."—*Kent's Com.*, vol. ii., p. 236, 11th ed. Boston, 1866.

[4] 1 and 2 Vict., c. 54, s. 1. [5] Warde *v.* Warde, 2 Ph., p. 786.

My only object in referring at such length to the enforced separation of Mrs. Sanger from her children, and the law relating to that subject, is to point out the very peculiar position in which Dr. Clark was thus placed as the medical attendant of the young wards of Court. There can be no doubt that in communicating occasionally with Mrs. Sanger, he gave great offence to her brother-in-law, the acting guardian, who wished to prevent her from even hearing of her children.[1] Yet how could he have acted otherwise, either in his professional capacity or as a "good citizen?" Had her offences been worse than those of other parents whose children have been taken from them by the Court of Chancery? If the Divine law deals mercifully with the offender, why should a British Court of Equity shut out all hope of repentance and amendment?[2] Could Dr. Clark with decency, although her "sins might be red as scarlet," refuse to see her, or to supply her with information respecting the state of her daughters' health? or could he turn a deaf ear to any wishes she might express concerning them, consistently with the great principles so ably expounded by the learned judges whose masterly judgments I have cited? and especially after the conclusive judgment of the House of Lords in the notorious case of Wellesley *v.* Beaufort? Or was he bound, in simple deference to the morbid feelings of the acting guardian, to ignore altogether the natural rights, nay the very existence, of the unhappy mother of his young patients? Or on the contrary, was it not rather his duty, when one of them was believed to be dying, to endeavour, whilst exercising his professional functions, to bring the contending parties into harmony, and restore peace to a distracted family by "throwing a cruse of oil" over the troubled waters of domestic strife?

(§ 9). It appears that when the two children were first confided to the care of Mr. Godwin's friend, Mrs. Twigg, in the year 1861, special terms were made by the guardians with respect to the cost of their board, lodging and education. I am informed that the sum of one hundred guineas per annum was to be allowed for the elder, and seventy or eighty guineas for the younger ward; and one guinea each was to be paid per week for travelling expenses. But on the production of some of the

[1] It will presently be seen, however, that Dr. Clark was expressly empowered by Lord Romilly himself to accompany the mother when she visited her sick daughter. It was left, in fact, to his discretion to say how often she should see the child. (See page 26). Yet, supposing no such order to have been made, was not the mother entitled—by a law of sacred origin and consequently of far greater authority than that which any Equity Judge can administer—to "hear" at least of everything that might concern the welfare of her children?

[2] "One heart-throb sometimes earneth Heaven! one tear!"—Bailey's *Festus*

half-yearly school bills before the Examiner of the Court of Chancery, it appeared that, under the name of "extras," various other heavy charges were inserted, which made the education of the young ladies at the school of Mrs. Twigg quite a costly affair. The guardians, when dealing with Mr. Godwin's friend, the schoolmistress, were liberal even to the verge of extravagance; but niggardly towards the medical man who saved the life of one of their young wards.

(§ 10). By the hand of death the aged schoolmistress has been removed from all worldly strife and contention;[1] and I could wish that none but the most pleasant associations should be connected with her memory. For some time her health had been gradually sinking, and she often required Dr. Clark's professional advice and assistance, which he cheerfully rendered, without fee or reward. She was kind, amiable, and, in some respects, well fitted for the task she had undertaken of directing the education of the youthful members of her own sex. But the feeble state of her health and other circumstances rendered her quite unable and unwilling, mentally as well as physically, to sustain any unusual amount of exertion or responsibility. "Do not implicate me in any way," she said in one of her last letters to the solicitors of the guardians, "as I am far too weak for contention."[2] So it happened that throughout the alarming illness of her pupil, Eva Sanger, she became a passive instrument in the hands of the acting guardian, and following, as I believe, his instructions, she interfered with Dr. Clark in the performance of his duty, and on one occasion, when the child's life was in jeopardy, she took upon herself to disregard entirely the advice of Sir William Jenner and Dr. Clark. Speaking upon this subject, one of the medical witnesses has very justly remarked, that so rash an act on her part was well deserving of the censure of the Court.

(§ 11). The school of Mrs. Twigg was one of a high, but not of the highest, class of such establishments. In every way, however, it was respectable and well-conducted. But all of us will agree that the old maxim of the law, "*Domus sua cuique est tutissimum refugium*," is full of practical good sense and meaning. Still further, I think we must allow, that for a child of tender age, during an illness that threatens life itself, the very best regulated boarding-school must necessarily form a very inadequate

[1] She died 7th February, 1868, more than two years after Dr. Clark had ceased to attend Eva Sanger. After her death the little girl was placed at another boarding-school kept by Mrs. Travers and Miss Barker, at St. John's Wood. But it is said that the mother was left in ignorance of Mrs. Twigg's death and the removal of her daughter to another school for some months, and then suddenly became aware of the circumstances by mere accident! Unhappy mother! Unfortunate child!

[2] Mrs. Twigg to Mr. Godwin, May 2, 1866.

substitute for the quiet repose, the domestic comfort, and the loving solicitude which parents provide for their children under the roof of the well-managed family home. That love, care and comfort were unhappily denied to Eva Sanger! Her father died when she was an infant; her mother, though still living, was dead to her also; and in truth and reality, she was an orphan.

(§ 12). In one respect I sometimes think that her plight may have been worse—if worse be possible—than that of the unfortunate children who find a refuge at the Foundling or in one of our public orphan asylums; for, in dealing with the latter class of patients, the medical attendant is never thwarted in his work of humanity by the caprices of a guardian or a schoolmistress. He is always left to fulfil his errand of mercy without let or hindrance. For such children there can be no appeal to the Lord Chancellor or to the Master of the Rolls. It is, indeed, quite true, as I have already said, that orphans without property can never become wards of Chancery. They are too poor, too lowly, and too insignificant to induce any next friend or *prochain ami* to bring their cases before the only tribunal in the land which can take judicial notice of the rights and the wrongs of infants; and, as if in mockery of their helplessness, an established maxim declares that "*De minimis non curat lex.*" To medical men the doctrine is simply horrible. The good physician will remain at the bedside of the dying pauper, even when the richest duchess sends to him for professional aid. Yet, perhaps, the very poverty of these legal outcasts may, after all, be their best and surest protection. For no lawyers, schoolmistresses or greedy relatives can be suspected of wishing to shorten the lives of penniless orphans, who, whether living or dead, can bring no accession of honour or wealth to themselves.

(§ 13). On the other hand, when opulence, or even a distant prospect of opulence, intervenes, how soon the scene is changed! With what alacrity the guardian, the schoolmistress and the lawyer become suddenly alive to the worldly interests of the rich orphan! How careful are they that he should be made a ward of Chancery, and that the "effectual protection of the Court" should without a moment's delay be invoked on behalf both of himself and—his estate. But, alas! when sudden and dangerous illness arises, what conflicting hopes, thoughts, passions and expectations are sometimes engendered! How often may mere pecuniary considerations be put into the balance with the imperious duty of saving the life of the child! And, then, with what accumulated dangers and difficulties is the path of the physician too frequently surrounded!

CHAPTER IV.

§§ 1-3. The Elder Ward, Lilly Laurence Sanger.— §§ 4-6. Illness of Eva Sanger—Mesenteric Disease. — Her Perilous Condition. — §§ 7, 8. Sir James Mackintosh Quoted. — § 9. Family Discords. — §§ 10, 11. Sir William Jenner.— §§ 12-14. Extraordinary Conduct of the Acting Guardian.— §§ 15-18. Mrs. Sanger — Lord Romilly's Order in her Favour. — § 19. Her Interviews with her Child. — §§ 20 - 22. Two Visits to Worthing — Propriety and Necessity of these Visits.

"I am aware of the serious illness of the plaintiff Eva Sanger. It was very alarming, and at one time most critical; so much so, that I thought she had not many hours to live."—*Deposition of Mr. Serjeant Atkinson*, June 18th, 1868.

"Where human life is concerned, nothing should be taken for granted; danger should be constantly apprehended till the contrary is ascertained."—*The Times.*

"Choose some fresher air;
That does help much in physic."

Massinger.[1]

(§ 1). From the foregoing statement my readers will be able to form some idea of the family of Sanger, and the difficulties which would be probably encountered by any professional man who might become entangled with them or their affairs. It was, I believe, in the year 1862, that Dr. Clark was first consulted[2] in reference to Mrs. Sanger and her young daughters, and in the following year (1863), he attended one or the other of them, about the time when she was removed from the guardianship. It was not, however, until the year 1865, that the circumstances arose which caused the recent investigation before the Master of the Rolls.

(§ 2). As regards the elder ward, Lilly Laurence Sanger, a few words will suffice to explain her case. On the 18th January, 1865, she called to consult Dr. Clark at his house in St. Mark's Square, accompanied by the French governess from Mrs. Twigg's. She continued to be his patient for a period of nearly three months,

[1] *Parliament of Love*, act iv., scene 1.

[2] By Messrs. Bullock and Crockett, of Lincoln's-inn-fields, then acting as the solicitors of the next friend of the young wards. Afterwards other solicitors were engaged. (See pp. 62, 63.)

viz., from the 18th January to 13th April following, and he saw her on twenty-nine different days. The following is an analysis of his professional visits during that period :—

Visits in	January, 1865	6
„	February, „	6
„	March, „	12
„	April, „	5
	Total visits	29

(§ 3). It has been rashly asserted by the acting guardian that the ailment from which his niece, Lilly Laurence Sanger, suffered, was one of a light and trivial character.[1] This is, however, a gross misrepresentation of the facts; her malady being an affection of the neck, and if it had been neglected, it might have caused deformity or the personal disfigurement of the patient. No doubt this would be regarded as a matter of little moment by a guardian like Mr. Thomas Sanger, who has such a "keen eye to expense," and who probably thinks that no medical aid was needed, or at any rate that the fees of the duly qualified medical practitioner should, in such a case, be placed on a level with, if not lower than, those of the veterinary doctor who cures a favourite horse or hound. But will any prudent parent, or any other guardian, possessing ordinary common sense, venture to say that a malady likely to lead to the permanent personal disfigurement of a young lady of fortune of the age of seventeen, and of attractive appearance, is properly described as a "slight and trivial" ailment? With this explanation I pass on to the case of the younger ward, Eva Sanger, which forms the special subject of my narrative.

(§ 4). It was on the 26th of January, 1865, that Dr. Clark was first sent for by Mrs. Twigg to attend Eva Sanger for measles.[2] She is an interesting child, of very delicate constitution, and at that time was only eight or nine years of age.

(§ 5). Almost immediately after her recovery from measles she was attacked with disease of the mesenteric glands, and became alarmingly ill. It would, indeed, be very difficult to find words which adequately describe the fearful state of debility and emaciation to which the child was rapidly reduced. Suffice it to say, that the malady was of constitutional origin, and of the

[1] "I was aware of the *slight* ailment for which my niece, Lilly Laurence Sanger, was attended by Dr. Clark, in 1865."—(*Thomas Sanger's Affidavit* of 7th July, 1868.)

[2] From what Dr. Clark then saw he warned the schoolmistress that Eva Sanger required attention; that her general health should be carefully looked after. Early in March he discovered the first symptoms of mesenteric disease in her; and I may observe that such an occurrence does sometimes take place with delicate children when all care has been taken.

most perilous character. Beyond all doubt such cases require the most watchful care and treatment, which must often continue over a protracted period of time, and even then, in many instances, they may baffle the skill of the most expert practitioner.

(§ 6). For the information of readers not belonging to the medical profession, I may explain that the disease in question, to which many nosologists have applied the name of *tabes mesenterica*, is an acute inflammatory affection of the mesenteric glands of the bowels or intestines, of the same nature as the tubercular disease which is commonly called consumption (*phthisis pulmonalis*) when the lungs are affected.[1] The great danger and supposed incurability of tubercular disease of the mesenteric glands depend on the diseases by which it is often accompanied. Accordingly we find that tubercular pulmonary consumption is very frequently associated with such mesenteric disease. Either malady may precede the other; and although the disease of the lungs may not be attended by that of the mesenteric glands, the latter rarely exists for a considerable period without inducing a great liability to the former.

(§ 7). The peculiar character and rapid progress of the disease, and the fact that a child of such tender age was at a boarding-school, and deprived of her home and of a mother's care and attention, caused Dr. Clark to feel more than an ordinary sense of anxiety and professional responsibility. It is when dealing with the lives of children, under such unfavourable circumstances, that every medical attendant must feel the arduous nature of his calling, and the truth of the sentiments which the late Sir James Mackintosh expressed in one of the latest and most characteristic of his speeches:—

"The main length of life depends on the treatment of children; and the decline of medical science must be attended, in its very beginning, by a real, though not nominal, massacre of infants. If, indeed, it were to kill at a blow, it might be a blessing to many, but its victims will die so slowly none can call it murder. The bungling surgeon will make his instrument a means of more cruelty than the tomahawk: the ignorant physician will kill only by the protracted torture of disease."[2]

[1] The malady is rarely simple even at any one period of its course, but is generally, as in Eva Sanger's case, the consequence of some antecedent disorder.

[2] Speech on the Anatomy Bill, which interested him much, associated as it was, so closely with the subject of his early studies. (*Memoirs of Sir James Mackintosh, by his Son*, vol. i., p. 439). The great orator has himself told us under what circumstances he entered the medical profession. "Our deliberations," he says, "terminated in the choice of physic, and I set out for Edinburgh to begin my studies in October, 1784," (Ibid., vol. i., p. 21). He remained three years at Edinburgh as a medical student, and graduated there as M.D. in 1787 and in the following year he repaired to London with a view to practise medicine as a profession. (Ibid., vol. i., pp. 39-41).

(§ 8). The words of that great statesman and orator are strictly applicable to the condition of the little girl Eva Sanger, in 1865. It is, indeed, literally true that, if shut out from medical aid, or treated unskilfully, she would have become a "victim." She would have gradually wasted away, and "died so slowly, none could call it murder."

(§ 9). Another source of uneasiness and annoyance arose from Dr. Clark's knowledge of the family discords to which I have already alluded, the character of the parties concerned, and the peculiar nature of all the surrounding circumstances. I speak truly when I say that, from the very beginning, Dr. Clark had a strong presentiment that, sooner or later, he should find himself involved in trouble and difficulty. He knew that he would be compelled to be perpetually upon his guard. He knew also that he would have very many persons to consult, some of whom were not upon friendly or even speaking terms with each other,[1] and, in all probability, he would be the only available medium of communication between them. He knew also, that if he failed to see and confer with either of them, he would be complained of for neglect of duty; and he entertained grave doubts whether it would be possible to do his duty towards the child without giving offence to some one or other of the parties. Yet, with the prospect of all these difficulties before his eyes, he considered that he ought not to abandon Eva Sanger.

(§ 10). In order to relieve himself, however, from some portion of the heavy responsibility, he determined to consult Sir William Jenner, who is so high an authority on the diseases of children, that his judgment might be considered as decisive, and without appeal. I feel sure that every prudent person and every medical man will say, that in so acting he was deserving of praise rather than of censure.[2]

(§ 11). The first consultation with Sir William Jenner took place at Macclesfield House, on the 23rd of March, 1865. In the affidavit[3] subsequently sworn by him on Dr. Clark's behalf, there is the following passage:—

"The child was suffering from disease of the mesenteric glands, which is a malady of the most serious character. She was dangerously ill and greatly emaciated, and, in my opinion, her life was then in imminent peril."

[1] Judging from what he saw, and the disrespectful language he often heard, Dr. Clark considered that the co-guardian and the solicitor, as well as Mrs. Sanger, were not upon very friendly terms with the acting guardian.

[2] Even the acting guardian acknowledged the propriety of the course pursued on this occasion. "I should have called in a physician," he says, "in the case of a child of my own." (*Cross-examination of Thos. Sanger*, 27th July, 1868.)

[3] See Affidavit of Sir Wm. Jenner, in Appendix, No. 1.

Dr. Clark can never forget that consultation. In the presence of the schoolmistress, Sir William Jenner stated that the recovery of the child was barely possible, that he did not at all expect it, and, in his opinion, she would gradually waste away. "Have you then no word of comfort to give me respecting my young pupil?" asked the kindhearted schoolmistress. "Not one single word," was the emphatic answer of Sir William Jenner. It was evident, therefore, that in taking charge of Eva Sanger, Dr. Clark was, in military phrase, something like the leader of a "forlorn hope;" yet, not despairing of success, he told the schoolmistress that much would still depend upon the efforts that would be made.

(§ 12). On the same day, Dr. Clark had an interview with the acting guardian, Mr. Thomas Sanger—and I mention the circumstance the more readily, as it was on this occasion only that Mr. Sanger treated him with ordinary courtesy.[1] On informing him of the very serious opinion entertained by Sir William Jenner and himself Mr. Sanger requested him to write a letter to him conveying their united opinion upon the subject, which Dr. Clark did on the following day. Speaking of this interview, Mr. Sanger said, on cross-examination[2] before the Examiner of the Court of Chancery, that "it was the first time of his hearing that Eva was ill with a serious complaint;" and counsel elicited from him the following extraordinary statement respecting Dr. Clark's employment as the medical attendant of his niece:—

"I turned to the *Medical Register* and found what titles he had. I knew nothing of his professional standing or proficiency. I never heard of any case he had attended. I did not know his age. I learnt from the *Medical Directory* how long he had been in practice. *I made no inquiries about him after 23rd March. It was not my business;* he was called in by Mrs. Twigg, and Eva was under her charge by order of the Court."

It was not his business! What an extraordinary avowal! He was sole executor and manager of the property, and the acting guardian appointed by the High Court of Chancery; yet he coolly tells us that "it was not his business" to make inquiries as to the professional standing and proficiency of the medical man who had been called in to attend his young niece, whose malady, it was believed, would prove fatal.

(§ 13). Some time afterwards Dr. Clark was informed that Mr. Serjeant Atkinson and Mr. Thomas Sanger immediately saw the young ward, and were so impressed with her state, that they made

[1] During the eleven months Dr. Clark attended the child, he only saw him three times, viz., March 23rd, April 21st, and July 8th; these interviews being sought by him, and not by Mr Sanger, for some special purpose affecting her welfare. From beginning to end Dr. Clark found him as inaccessible as a "porcupine with his quills against all opposers." He seems, indeed, to have inspired terror in every one but the doctor.

[2] Cross-examination of Thomas Sanger, 27th July, 1868.

arrangements for her funeral, and gravely considered what course should be pursued with regard to the mother on the mournful occasion. Although the fact has been denied, it is at least very plain that the learned serjeant entertained not the smallest hope of the child's recovery; and, indeed, expressed himself to that effect in the sworn testimony[1] which he gave before the Examiner of the Court:—

"*I am aware of the serious illness of the plaintiff, Eva Sanger. It was very alarming, and at one time most critical, so much so that I* THOUGHT SHE HAD NOT MANY HOURS TO LIVE."

(§ 14). It has always appeared to me most extraordinary that during the period when Eva Sanger was in such a perilous condition, and Sir William Jenner and Dr. Clark had expressed themselves so strongly concerning her danger, neither her paternal uncle and acting guardian, nor her other surviving uncle, nor her paternal aunt, nor the "next friend" who was instrumental in plunging the estate into Chancery, nor "Altera Pars,"[2] the favoured anonymous correspondent of the *Daily News*, nor any other member of the Sanger family, except the unfortunate mother of the child, ever sent to or called upon Dr. Clark to make inquiries respecting his young patient. On the contrary, as regards the acting guardian, it is painful to add, that when Dr. Clark went to him on two subsequent occasions, instead of thanking him for his attention, or expressing gratification at the improvement of his niece, he seemed to manifest no real anxiety respecting her. In speaking of her health, he said that "she was as well as he was!" And the language he employed certainly conveyed to the mind of his hearers the impression that he was treating the matter with indifference, if not with levity.

(§ 15). At this time it will be remembered that the mother of the child had been restrained by the special order of the Court, of 29th April, 1863, from visiting or communicating in any way with her children. But hearing of the illness of the younger child, and believing, perhaps, that in such an extremity the order of the Court would not be rigidly enforced, Mrs. Sanger asked her solicitor, the late Mr. Sweeting, to accompany her to the house of Mrs. Twigg, which he very kindly did, on the 24th March.[3] Mrs. Twigg, however, being ill, Mr. Sweeting intro-

[1] Deposition of Mr. Serjeant Atkinson, 18th June, 1868.

[2] The stepson, as I believe, of the acting guardian.

[3] In announcing the fact, on the 24th of March, to the solicitors of the guardians, the late Mr. Sweeting remarked that, "both in person and manners, Mrs. Sanger has, according to my judgment, lately become greatly altered for the better, and she seems heart-broken at not being able to see her sick child. Can you suggest any plan by which this can be effected?" —*MS. Correspondence*, No. 5.

duced his client to the sister, and left the ladies in conversation together. With what result the following letter will show :—

"Dear Sir,—

"I am sorry to tell you I did not see my dear children. Mrs. Twigg's sister told me that Mrs. Twigg dare not [permit it?] until she had written about it. I fear dear Eva will not recover. I am broken-hearted. This is indeed punishment. Help me, if you can, with them.

"Yours faithfully,

"R. Sweeting, Esq. "J. SANGER."

The circumstance of Mrs. Sanger's visit was reported the same day to the solicitor of the guardians, Mr. Godwin, who immediately wrote a letter of complaint to Mr. Sweeting, stating that it was in direct opposition to the order of the Court, and requesting, "on behalf of the guardians, that such a proceeding be not repeated."

(§ 16). Now it must be admitted that, according to the tenor of the restraining order of Lord Romilly—according, in fact, to the "strict letter of the bond" — the schoolmistress and the guardians were *legally* justified in refusing to allow the mother to visit her sick daughter. But was it right to enforce the penalty against her on such an occasion? Was it consistent with the law requiring a guardian to be a person of "humane *character?*" Was it not like "robbing the widow of her tears?" And is it likely that the Master of the Rolls would have interposed any obstacle, considering that the child might possibly have died before his lordship's permission could be obtained?

(§ 17). In this state of things, Messrs. Sweeting and Lydall made an application to the judge in chambers for an order enabling her to visit her sick child. Dr. Clark was requested by them to attend the appointment at Chambers, and he did so accordingly, on the 29th of that month, when the following order was made :—

LORD ROMILLY'S ORDER.

"Godwin.[1]

"Sweeting and Lydall. [2]

"Dr. Clark attended.

"Permission given to Dr. Clark to ask plaintiff, Eva Sanger, if she wished to see her mother, Mrs. Sanger, and if she expresses such wish or does not object to see her, then that Mrs. Sanger be at liberty to see her

[1] It appears, therefore, that Mr. Godwin undertook, on this occasion, to represent both the next friend of the wards of Court as well as their guardians, acting, indeed, as the solicitor of the plaintiffs and the defendants in the cause. What jarring ideas and duties! How can such a course of procedure be justified? How can it be reconciled with the established rule that the solicitor of a *next friend* must not have interests adverse to those of the minor, nor be professionally bound to support adverse interests? (See Langford *v.* Little, 5 Ir. Eq. R., 343.)

[2] The solicitors of Mrs. Sanger.

daughter, Eva, in the presence of Dr. Clark, provided Dr. Clark is of opinion such interview will not be injurious to the child.

"The interview may be repeated during the illness of the child, in the presence of Dr. Clark, at such times as he shall think fit.

"29th March, 1865."

(§ 18). At this conference the chief clerk[1] requested the solicitors to leave the room, and during their absence he conferred with Dr. Clark respecting the alarming illness of the child, and gave him instructions as to the mode in which the mother might be allowed to see the daughter in his presence. The result of that interview left an impression on his mind that the care of Eva Sanger, as a ward of Court, was confided to him, and that he was her recognized medical attendant.

(§ 19). On speaking to the little girl, Dr. Clark found her perfectly willing to see her mother, and an interview took place between them in his presence, on the 31st March.[2] For some time afterwards he communicated daily with Mrs. Sanger respecting the child.

(§ 20). At the end of about three weeks some of the most alarming symptoms had partially subsided, and Dr. Clark recommended that his young patient should be removed from the atmosphere of the London school to the seaside. No medical man can doubt the wisdom of that recommendation. Careful diet and regimen; change of air, particularly to the seaside; bathing, and gentle but regular exercise in the open air, constitute an important part of the treatment in mesenteric cases. His advice being adopted, she was taken by Mrs. Twigg[3] to Worthing, at which place he visited her on two occasions; namely, on the 23rd and 30th of April.

(§ 21). Before making these journeys Dr. Clark called upon Mr. Godwin, the solicitor of the guardians, on the 20th April, to confer with him as to the best mode of providing her with medical aid whilst staying at the seaside. He asked whether he should visit her himself or employ a medical man in the country. The proposal he made was to this effect: that if she should be so ill as to require constant medical attendance, he would select the best practitioner in the neighbourhood, and go down to confer with him respecting her case, and place her under his care, or make arrangements for her immediate return to London. But on

[1] Mr. Hume.

[2] There was another interview on the 9th May; but on the 1st of July following Mr. Godwin wrote to say that the order allowing Mrs. Sanger to visit the little girl was withdrawn. He wished Dr. Clark to "impress upon her that if she attempted to communicate with her children she would infallibly be committed to prison"!—*MS. Correspondence*, No. 21.

[3] Dr. Clark went with them to the railway station.

the other hand, if it should only be necessary for her to be seen occasionally, Dr. Clark would continue to attend her himself, Mr. Godwin expressed his approval of that arrangement, but at the same time added, that "it was no part of a solicitor's business to interfere in such matters," and for that reason recommended him to speak to the acting guardian upon the subject. Accordingly, on the same day Dr. Clark saw Mr. Thomas Sanger, who offered no objection or opposition to the plan proposed, and after the visits had been paid, the Doctor entered them in his book in the following terms :—

"1865. April 23. Journey to Worthing (arranged by Mr. Godwin).
„ 30. Journey to Worthing (arranged by Mr. Godwin)."

(§ 22). Beyond all doubt and dispute the life of Eva Sanger was then in jeopardy, and Dr. Clark would have grossly neglected his duty if he had left her at the seaside without medical aid.[1]

[1] See pp. 115, 136, 137.

CHAPTER V.

§§ 1-2. Return of Eva Sanger from Worthing.—§§ 3, 4. Improper Interference of Schoolmistress. — § 5. Second Consultation with Sir William Jenner. §§ 6, 7. The Removal of the Child from London advised.—§§ 8, 9. Mr. Serjeant Atkinson's Letter —The Advice of Sir William Jenner and Dr. Clark disobeyed — Reprehensible Neglect of the Acting Guardian and continued Interference of the Schoolmistress.—§ 10. Letter of 24th July. — §§ 11, 12. Singular Correspondence between the Acting Guardian and his Solicitors.—§ 13. Dr. Clark's Letter unanswered—Reflections on the Correspondence and Conduct of the Parties.—§ 14. Responsibility of Medical Men.— §§ 15, 16. Malpractice or Mala-praxis — its Civil and Penal Consequences.—§§ 17-19. The Acting Guardian illegally removes the Elder Ward from England— Contempt of the Court of Chancery—Indignation and Threats of the Mother—Precipitate Return of the Guardian and his Ward.—§ 20. Reflections.

"I cannot but own, that men's sticking to their past judgment, and adhering firmly to conclusions formerly made, is often the cause of great obstinacy in error and mistake. Those being generally the most fierce and firm in their tenets who have least examined them."—Locke's[1] *Essay on Human Understanding*, b. iv., c. xvi., s. 3.

"Conceit in weakest bodies strongest works."

Hamlet, *act* iii., *scene* 4.

"It has always been the principle of this court not to risk the incurring of damage to children which it cannot repair, but rather prevent the damage being done."[2]—Lord Eldon.

(§ 1). Dr. Clark was much pleased to find that his young patient derived some little benefit from her short stay of a fortnight at Worthing. On her return to London, in the beginning of May, she was less emaciated, and had improved considerably in outward appearance, and the acting guardian and the schoolmistress began to think and to say that she was nearly convalescent.

[1] The great philosopher, John Locke, was educated for the medical profession, and took the degree of Bachelor of Medicine at Oxford, in 1674.

[2] Wellesley *v.* Beaufort, Russell's Reports, vol. i., p. 18.

(§ 2). In point of fact, however, the external indications of health on which they relied were all purely and entirely deceptive. The progress of the malady had, indeed, been slightly checked, but her condition was still one of great peril, and caused Dr. Clark much anxiety.

(§ 3). From the moment these delusory signs of improvement had made their appearance the behaviour of the schoolmistress towards the Doctor underwent a total change. Acting, as he verily believes, under the instructions of the acting guardian, Mrs. Twigg soon began to interfere with and obstruct him in the discharge of his duty. Unless she had direct authority from him, I can hardly think she would have dared to adopt such a course of proceeding. But, however this may be, Dr. Clark perceived that she considered his visits were unnecessary, and consequently they often became very disagreeable to him. Sometimes he felt inclined to think that a settled plan had been formed to get rid of him altogether, and to abandon the child to her fate by depriving her of all medical assistance.

(§ 4). On the other hand Dr. Clark knew that his attendance was more urgently needed than ever. It would therefore have been a disgraceful act on his part if, in consequence of mere personal affronts to himself, he had relinquished his post of duty whilst the life of the patient was in jeopardy. At the same time. in order to guard himself from the imputation of mercenary motives, which might otherwise have been made against him, he fixed another consultation with Sir William Jenner.

(§ 5). This second consultation took place on the 13th May. 1865, at the house of Sir William Jenner, in Harley-street,[1] and the result is shown in the following passage[2] in his affidavit:—

"I saw her [Eva Sanger] again, in consultation with Dr. Clark, on or about the 13th of May, 1865, when her outward appearance was improved. But, in my judgment, it was certainly the duty of her medical attendant not to relax in his attention to the case, but rather to use increased efforts to promote the recovery of the young patient. I recommended also that she should reside for a time at a farmhouse, which I thought might be very beneficial in restoring her to health."

Dr. Clark well remembers the words used by Sir William Jenner after they had carefully examined the child:—"*If one effort,*" he remarked, "*was needed when I first saw her, at least two are necessary now,*" and they were entirely agreed as to the necessity of removing her at once into the country.

(§ 6). It is now a well-recognized fact in physiology, that close confinement, impure atmosphere, and improper food, are the main sources of tubercular disease in our crowded cities. It follows,

[1] Dr. Clark took the child with him to Sir William Jenner's house.

[2] See Affidavit of Sir William Jenner, in Appendix, No. 1, par. 3.

CHAPTER V.

§§ 1-2. Return of Eva Sanger from Worthing.—§§ 3, 4. Improper Interference of Schoolmistress. — § 5. Second Consultation with Sir William Jenner. §§ 6, 7. The Removal of the Child from London advised.—§§ 8, 9. Mr. Serjeant Atkinson's Letter —The Advice of Sir William Jenner and Dr. Clark disobeyed — Reprehensible Neglect of the Acting Guardian and continued Interference of the Schoolmistress.—§ 10. Letter of 24th July. — §§ 11, 12. Singular Correspondence between the Acting Guardian and his Solicitors.—§ 13. Dr. Clark's Letter unanswered—Reflections on the Correspondence and Conduct of the Parties.—§ 14. Responsibility of Medical Men.— §§ 15, 16. Malpractice or Mala-praxis — its Civil and Penal Consequences.—§§ 17-19. The Acting Guardian illegally removes the Elder Ward from England— Contempt of the Court of Chancery—Indignation and Threats of the Mother—Precipitate Return of the Guardian and his Ward.—§ 20. Reflections.

"I cannot but own, that men's sticking to their past judgment, and adhering firmly to conclusions formerly made, is often the cause of great obstinacy in error and mistake. Those being generally the most fierce and firm in their tenets who have least examined them."—Locke's[1] *Essay on Human Understanding*, b. iv., c. xvi., s. 3.

"Conceit in weakest bodies strongest works."

Hamlet, *act* iii., *scene* 4.

"It has always been the principle of this court not to risk the incurring of damage to children which it cannot repair, but rather prevent the damage being done."[2]—Lord Eldon.

(§ 1). Dr. Clark was much pleased to find that his young patient derived some little benefit from her short stay of a fortnight at Worthing. On her return to London, in the beginning of May, she was less emaciated, and had improved considerably in outward appearance, and the acting guardian and the schoolmistress began to think and to say that she was nearly convalescent.

[1] The great philosopher, John Locke, was educated for the medical profession, and took the degree of Bachelor of Medicine at Oxford, in 1674.

[2] Wellesley *v.* Beaufort, Russell's Reports, vol. i., p. 18.

opinion to the guardians, and expressed the greatest antipathy to that portion of the advice which related to the removal of the young patient to a farmhouse or elsewhere.

(§ 8). It was suggested, and I believe very truly, by Serjeant Atkinson, that her objections merely arose from the belief that the proposal would involve the entire removal of the child from her charge, and entail upon her a pecuniary loss. To remove any fear she might entertain on that point, the learned serjeant wrote the following letter:—

1, Serjeants' Inn, Chancery Lane,
May 30th, 1865.

My dear Sir,—

I am sorry to hear there has been any misunderstanding in the matter. It was your duty to communicate to us the opinion of yourself and Dr. Jenner, and had you not done so you would in all probability have been desired to cease your attendance upon her.

Mrs. Twigg must, I think, have misunderstood the proposed arrangements. It was in substance this—namely, that Miss Eva Sanger should go into the country for a few months for a change of air, returning whenever she pleased to her *home* at Mrs. Twigg's—the whole expense being defrayed by us—not by Mrs. Twigg.

Mrs. Twigg would receive to a farthing what she received before; in fact, she would be benefited just so much as the board and lodgings of Miss Eva cost her now.

Mrs. Twigg must be under the impression that it would be out of her pocket. It would, in fact, be a considerable saving to her.

I am, dear Sir,
Yours sincerely,
Dr. Clark. GEORGE ATKINSON.

Notwithstanding this letter, which Dr. Clark handed to Mrs. Twigg, she still opposed the proposal, and in fact the advice given by Sir William Jenner and himself was totally disobeyed by her and the guardians.[1] Mere pecuniary considerations were thus put in the balance with the imperious duty of saving the life of the patient. What a grievous wrong to the child! and what an insult and discouragement to her medical attendant! In my judgment this was most prejudicial to Eva Sanger, and I thoroughly concur in the opinion expressed by one of the medical witnesses, that such conduct on the part of the schoolmistress and the guardians during the most critical period of the child's illness was well deserving of the censure of the Court of Chancery.[2] The proper course, I submit, would have been to cancel

[1] Why did they disobey the advice of the physicians? Did they doubt the soundness of their judgment? and if so, why did they not call in some other medical man? Or did they idly rely upon the *vis medicatrix naturæ*, and wish to leave the fate of the young ward to mere chance, or to what is termed the "chapter of accidents," which a powerful political writer once called the "Bible of fools?"

[2] See Affidavit of Dr. T. Browning Smith, in Appendix, No. 7, paragraph 16.

the order which placed the child under the charge of Mrs. Twigg; to remove from office or suspend both of the guardians;[1] and to appoint some other "capable" persons of "*humane* character"[2] to exercise the functions they had so grossly neglected.

(§ 9). After this period Dr. Clark's attendance at Macclesfield House, to see his patient, became still more unpleasant. He felt, however, his duty to the child required that, instead of relaxing his efforts he ought to increase them, as stated by Sir William Jenner. He frequently felt that he should have been glad to be liberated from so unsatisfactory and painful a position, and with that view he consulted his own solicitor, at the end of July, 1865, and was advised by me that he would fail in doing his duty towards Eva Sanger if he withdrew from the case—that in spite of every provocation and every insulting hint that might be offered to him by the acting guardian or the schoolmistress, he ought to persist in visiting the child until all danger of a relapse had ceased; or at any rate until relieved from responsibility by a formal dismissal from the guardians, or the appointment of some other medical attendant in his place. I added, that if their conduct towards him should become absolutely unbearable, he might make known all the facts of the case as *amicus curiæ*, to the Master of the Rolls, and that in the meantime he ought to explain his views to the acting guardian, and let his future course be guided by the character of the answer he might receive.

(§ 10). On the 8th July, Dr. Clark had an interview with the acting guardian, when the latter made the preposterous statement that his niece was quite well, and in consequence Dr. Clark wrote to him in the following terms:—

3, St. Mark's Square, Regent's Park,
24th July, 1865.

Dear Sir,—

I wish, before you leave town, to say a word or two respecting my professional attendance upon your niece, Eva Sanger.

If I correctly understand the remarks you made to me a few days ago, you are, I think, not fully aware of the real state of the case. Although her health has decidedly improved since she was so seriously ill in March, it would be a very great mistake indeed to suppose that she no longer needs the constant care and attention of a medical man. On the contrary, it is my deliberate judgment that she should be carefully watched, in order to guard against a relapse, which, in a disease of this serious nature, might be most disastrous. Nothing has transpired to alter the views of Dr. Jenner and myself, as conveyed to Mr. Godwin in my letter of 18th May, concerning the proper steps to be taken for the care and management of the invalid, and I regret very much that the guardians and Mrs. Twigg have hitherto

[1] See page 13. "In case any guardian abuse his trust, the Court will check and punish him; nay, sometimes will proceed to the removal of him, and appoint another in his stead."—*Bla. Com.*, ed. *Warren*, Lond., 1856, p. 349.

[2] See page 13.

found it difficult or inconvenient to act more completely in accordance with the advice contained in that letter.

I feel my responsibility. If I should fail in discharging my duty to this young lady, who is virtually an orphan, I should justly expose myself to the censure of the Court. So long, therefore, as I remain her medical adviser, I must be allowed to see her at such times as I may deem necessary, and of course her friends should co-operate with me in my efforts. If the views here expressed do not meet your approval, I hope you will tell me so frankly at once.

T. Sanger, Esq.,
36, Doughty Street,
Mecklenburgh Square.

And I am, dear Sir,
Yours truly,
JAMES CLARK.

(§ 11). In reply Dr. Clark received a little letter from the acting guardian—little, I may say, in every sense of the word. Here it is:—

36, Doughty Street, July 24th, 1865.

Dear Sir,—

I beg to acknowledge your favour of to-day, which I have sent to the solicitor, Mr. Godwin.

I remain,
Your obedient servant,
THOMAS SANGER.

Dr. Clark.

No other communication being made to him either by the acting guardian or his solicitor, Dr. Clark was left to act according to his own sense of duty and responsibility. But many months afterwards, when the matter had drifted into the chambers of the Master of the Rolls, it appeared from the correspondence then for the first time produced before the chief clerk, that, in forwarding his letter to the solicitors, Mr. Thomas Sanger wrote, on the 24th July, in the following terms:—

36, Doughty Street, W.C., July 24, 1865.

Dear Sir,—

I inclose a letter from Dr. Clark. No one can wish more than I do that my dear niece, Eva Sanger, shall have every proper medical attention. But I must say, when she was staying with us, a fortnight ago, she seemed as well as ever. My wife was at Macclesfield House yesterday, and found the child was out on a visit, and was reported very well and quite fat again.

"*I cannot of course decide if constant visits are needed, whether the child be in or out of town, but, under the circumstances, I cannot but have my doubts.* I SHALL SIMPLY ACKNOWLEDGE THE DOCTOR'S LETTER AND SAY I HAVE SENT IT TO YOU TO ACT JUST AS YOU PLEASE IN THE MATTER. We leave town on the 2nd August, taking Lilly with us to the Channel Islands, and I hear Mrs. Twigg is going to Brighton with Eva on the 29th instant."

Yours truly,
THOS. SANGER.

Messrs. Godwin & Pickett.

The letter is very characteristic. The writer was evidently unwilling to incur the smallest personal risk either by sanctioning or by forbidding the Doctor's attendance upon his sick niece. Then, as regards her serious ailment, he probably considered it

might be perilous to himself if he disregarded entirely the clearly expressed opinions of Sir William Jenner and Dr. Clark; and so, with an unavailing expression of his "wish" and of his presumptuous, unreasonable "doubts," he seems in effect to say,—

"I am sorry for her, as I have just cause, being her uncle and her guardian."—MUCH ADO ABOUT NOTHING, *act* ii., *scene* 3.

But at the same time, the chief aim being to escape responsibility, we have the astounding statement that he would leave the solicitors—the words are certainly very remarkable—"*to act just as they pleased in the matter!*" So it seems that he was ready to deal with the case of his niece in defiance of the maxim,—

"Delegata potestas non potest delegari;"

and was apparently quite reckless of the grave question whether the sacred duty or obligation of an executor, a trustee, and a guardian, imposed upon himself *personally*—by law, as well as by the ties of natural love and affection—of protecting the orphan child of a deceased brother, was one which any conscientious citizen would ever dream of delegating to a firm of lawyers, or any other persons, under any conceivable circumstances whatever. Yet the acting guardian of Eva Sanger, we see, was quite prepared to abdicate *his* functions and allow *his* lawyers, during her dangerous illness, "to act just as they pleased!"

(§ 12). But Mr. Godwin, being a shrewd lawyer, was equally determined to avoid all responsibility. So he simply returned Dr. Clark's letter, and wrote as follows to the acting guardian:—

9, King's Bench Walk, Temple,
25th July, 1865.

Dear Sir,—

We return you Dr. Clark's letter, which appears to us very kind, and we have no doubt he is very anxious that a case in which he has been so successful should not relapse.

The question of what attention and care the little girl should have is one entirely for the guardians, and which you as a man of family are, no doubt, best able to solve. Dr. Clark refers to conversations with you, the nature of which we do not know. If you have any doubt as to the propriety of Dr. Clark's treatment, or the necessity of the continuance of his attendance, or any other question touching the health of the little girl, we should recommend you, with Dr. Clark, to have a consultation with Dr. Jenner,[1] who has, we believe, already been consulted in the case, and act as he shall advise.

Thomas Sanger, Esq.,
36, Doughty Street.

Yours obediently,
GODWIN & PICKETT.

(§ 13). I offer this correspondence to the profession and the

[1] The sensible course here recommended by Mr. Godwin is the very one which, without knowing his opinion, at a later stage Dr. Clark adopted (see page 44). With strange inconsistency, it was then stigmatised by the acting guardian and Mr. Godwin himself, as unauthorised, unnecessary, and improper; and in fact, made the pretext for communicating with Dr. Clark in a tone of language so offensive that his own sense of self-respect compelled him to retire from the case.

public as a fair sample of the evasive—I might even say shuffling—tactics that were adopted from beginning to end. The schoolmistress was the mere mouthpiece of the acting guardian, and therefore powerless. The latter, for some reason I could never comprehend, was unwilling to incur the smallest responsibility, and vainly endeavoured to shift the burden from his own shoulders to those of his solicitor, Mr. Godwin; who, in his turn, with the usual caution and astuteness of his profession, contrived to escape by saying that the question whether Dr. Clark should visit the sick child or not, was one which the acting guardian as "*a man of family was best able to solve*," and that "*it was no part of a solicitor's duties to interfere in such matters!*" The learned co-guardian, Mr. Serjeant Atkinson, boldly abdicating all the rights, duties, and responsibilities of himself and his wife, declared that they had "*no permission to give!*" The *next friend* or *prochain ami* of the little girl, only made himself "conspicuous by his absence!"[1] And the wretched mother was deprived by order of the Master of the Rolls of every vestige of power! Was any orphan ward of Chancery, or any medical man, ever so unhappily placed or so badly treated before?

(§ 14). Still further, I would observe that in his course of conduct in this lamentable case, Dr. Clark was much swayed on this particular occasion by legal as well as by moral considerations. It appears that, by the law of England, the *mala praxis* of a physician is a great misdemeanour.[2] Every practitioner who professes to deal with the life or health of her Majesty's subjects, is *bound to have competent skill, and to use care, attention, and assiduity* in the treatment of his patients, and *if the patient dies for want thereof, such medical man is guilty of manslaughter.*[3] So, in the case of St. John Long, it was held by the Court of Queen's Bench that a medical man is criminally responsible for a patient's death if his conduct shows gross ignorance (*crassa ignorantia*) of his art, or gross inattention to his patient's safety.[4]

[1] "My charming patroness protects me unseen, like my *guardian* angel; and shuns my gratitude like a fairy, who is bountiful by stealth, and conceals the giver, when she bestows the gift."—DRYDEN, *Ded. to Cleomenes.*

[2] Russell on Crimes and Misdemeanours, ed. Greaves, vol. ii., p. 607, ed. 1865; Dr. Groenvelt's case, 1 Lord Raymond's Reports, p. 213. *Mala praxis* is classed among the "cheats and frauds" punishable at common law. It is of four kinds: 1. Wilful malpractice; 2. Avaricious malpractice; 3. Negligent malpractice; and 4. Ignorant malpractice.—(Willcock's Laws of the Medical Profession, p. 86.)

[3] Russell on Crimes, vol. i., p. 695.

[4] A coroner's inquest was held, 21st August, 1830, on the body of Miss Cashin, whose death, it was asserted, had been accelerated by the injudicious treatment and scandalous inattention of the late Mr. St. John Long. After

(§ 15.) Besides the liability to a criminal prosecution for gross neglect or *mala praxis*, the law of England also recognizes the fact, that although death may not immediately ensue, the health of individuals may be seriously injured by want of due care in medical practitioners.[1] Such wrongs or injuries are civilly cognizable by the courts of law, which provide a remedy in *damages* by a special action of trespass upon the case.[2] Thus it happens "where by any unwholesome practices of another, a man sustains any apparent damage in his vigour or constitution, such as by *the neglect or unskilful management of his physician, surgeon, or apothecary*. For it hath been solemnly resolved that *mala praxis* is a great misdemeanour and offence at common law, *whether it be for curiosity and experiment, or by neglect; because it breaks the trust which the party had placed in his physician, and tends to the patient's destruction.*"[3] In like manner, it was held by Lord Ellenborough that if the health of an individual be injured by the unskilful or negligent or careless conduct of a surgeon or apothecary or general practitioner, in assuming to heal a dislocated or fractured limb, or *internal disorder*, an action for compensation may be sustained.[4] The doctrine is thus laid down in one of the legal text books:—

"If I hire the labour and services and skill of a surgeon, an apothecary, or any other professional person, he impliedly undertakes for the possession and exercise of ordinary skill and knowledge in the practice of his art or profession, and is responsible for any injury I may sustain from his neglect to exercise such skill."[5]

(§ 16). It seems, therefore, that being the recognized medical attendant of Eva Sanger, Dr. Clark was legally as well as morally bound to attend her with care, attention, and assiduity. Any want of skill or attention on his part would most undoubtedly have "tended to her destruction." If, through gross neglect on his part, her death had ensued, he might have been liable to an indictment for manslaughter; and if, for the same reason, she sus-

an investigation of many days, which excited great public interest, a verdict of manslaughter was returned; and on the 30th October following, Mr. St. John Long was tried at the Old Bailey, and found guilty; although for the defence no less than twenty-nine witnesses were called who had been his patients, and were satisfied with his skill and diligence. His sentence was a fine of £250.—(See *Carrington and Payne's Reports*, vol. iv., page 398; *Russell on Crimes*, vol. i., page 692; and the amusing chapter respecting St. John Long and his doings, in *Jeaffreson's Book about Doctors*.)

[1] Chitty's General Practice, vol. i., p. 42.

[2] Bla. Com., vol. ii., p. 122.

[3] Ibid., vol. iii., p. 122.

[4] Seare *v.* Prentice, East's Reports, vol. viii., p. 34.

[5] Addison on Contracts, by Cave, ed., 1869, p. 401

tained serious bodily injury, or her illness had been prolonged or rendered still more perilous by becoming associated with other dangerous complications (as very frequently happens in mesenteric cases), it seems to be equally plain that he might have been sued at law for the recovery of the consequential damages.

(§ 17). But to return to my narrative. Without condescending to take any further notice of Dr. Clark's letter, and without giving any instructions for his guidance, the acting guardian, with the full knowledge of his co-guardian [1] and his solicitor [2] proceeded to remove the elder sister, Lilly Laurence Sanger, from England to the Channel Islands at the end of July, 1865.

(§ 18). There can be no doubt that this was an illegal act, and a high contempt of the authority of the Court of Chancery, for which the assenting parties might have been punished by imprisonment, as well as by the censure of the Court, and removal from the guardianship. Afterwards, a lame and impotent attempt was made to palliate the offence, upon the flimsy pretext that they believed Jersey and Guernsey were not out of the jurisdiction of the English courts of equity! But who can believe that a learned serjeant-at-law, a barrister practising in the Court of Chancery, and a solicitor practising in that Court, were all so grossly ignorant in a matter so plain and so notorious? And even if *that* were true, it could avail them nothing. *Ignorantia legis non excusat;* and, although that maxim may sometimes work mischief to those who are really unlearned, it would nevertheless be an insult to common sense if a serjeant-at-law, an equity barrister, and an equity solicitor, could be allowed to plead ignorance of the law as an excuse for illegal acts.

(§ 19). When the news reached the mother that her elder daughter, then nearly eighteen years of age, had been thus removed from England to the Channel Islands, and Mr. John Chester [3] was to be one of the party, she became highly indignant—I might almost say frantic! She began to manifest her disapprobation in her own peculiarly vigorous style. Amongst other acts of determined hostility she threatened to apply at

[1] The following passage occurs in the deposition of Thomas Sanger:—"I went to the Channel Islands and took Miss Lilly Sanger with me. *She called on Mrs. Atkinson, and she told me that she had told Mrs. Atkinson she was going there.* That was a day or two before we started."—*(Deposition of Thomas Sanger, on cross-examination,* 27th July, 1868.*)*

[2] Mr. Godwin was informed of the intended trip by Mr. Sanger himself.—*(See the letter of 24th July,* 1865, at page 34).

[3] Mr. John Chester, the stepson of the acting guardian, who was to form one of the Channel Islands excursion party.

once to the Court of Chancery on the subject; and there can be little doubt that she would have carried her threat into execution if the courts of Equity had not already risen for the long vacation, and if, moreover, the erring guardian, warned by a telegraphic message of the coming storm, and thinking, perhaps, that in a such a crisis "discretion was the better part of valour," had not, in much greater haste than they went, brought back[1] his young ward from the Channel Islands to England.

(§ 20). It may be thought that these are matters that lie beyond my province—yet they serve to shed a ray of light upon the conduct, the character, and the motives of some of the individuals by whom Dr. Clark was surrounded: and with this remark I pass on to consider, in the next chapter, what more immediately concerns Dr. Clark and the little girl Eva Sanger.

[1] "When I took Miss Sanger to Jersey I never thought that it was out of the jurisdiction of the Court; and *I brought her back the very next day after I heard it was so.*"—(*Re-examination of Thomas Sanger*, 26th January, 1869.

CHAPTER VI.

§ 1. Eva Sanger at Brighton.—§ 2. Peculiar Position of her Medical Attendant.—§ 3. Danger of a Relapse—The Three Visits to Brighton.—§§ 4, 5. Return of Eva Sanger to Macclesfield House—Annoying System of Obstruction continued by the Schoolmistress.—§ 6. The Mother's Letter of Inquiry. — §§ 7-9. Third Consultation with Sir William Jenner—Mr. Godwin raises Objections—The Acting Guardian and Mrs. Twigg absent themselves — Sir William Jenner's Certificate. —§§ 10-12. Subsequent Correspondence with the Guardians and Explanatory Comments.—§§ 13, 14. Discourteous Dismissal — The Young Ward left without Medical Aid.—§ 15. Analysis of Dr. Clark's Professional Visits.—§ 16. Frivolous Cavils Refuted.—§§ 17-19. Vindication of his Conduct—Extraordinary Statements and Proceedings of the Acting Guardian Criticised and Censured.—§ 20. Lord Langdale Quoted.

"Give place to the physician, for the Lord hath created him; let him not go from thee, for thou hast need of him. There is a time when in their hands there is good success."[1]—*Ecclesiasticus* xxxviii., verses 12, 13.

"If he ought begin,
How frequent to desert him, and at last
To heap ingratitude on worthiest deeds!"
Milton—*Samson Agonistes*, l. 274-276.

(§ 1). Whilst the acting guardian was engaged in committing an illegal act by removing his elder niece from England, and treating the Court of Chancery with contempt, the schoolmistress took Eva Sanger with her to Brighton, at the end of July.

(§ 2). I have already stated that no reply whatever was given to Dr. Clark's explicit letter of July 24, except the "little" note of the same date, which he received from the acting guardian. Being thus left to act according to his own sense of duty and responsibility, what was he to think or to do? After making such a

[1] "I do not determine," said Edmund Burke, "whether this book be canonical, as the Gallican Church (till lately) has considered it, or apocryphal, as here it is taken. I am sure it contains a great deal of sense and truth." (*Burke's Reflections*, ed. 1790, page 73.)

direct and pointed appeal to the guardian, he might, perhaps, reasonably assume that silence amounted to an acquiescence in his views. *Qui tacet consentire videtur.* He might, therefore, fairly conclude that he was at liberty to see his young patient as often as he thought necessary, and to exercise his own unfettered judgment as to the best mode of restoring her to health. But, however this may have been, knowing the critical condition of the child, he was determined to stand firmly, and not abandon her unless *the guardians or the Court thought fit to relieve him from responsibility. by appointing some other medical man to attend her in his place.* Upon this part of the subject he never entertained the smallest doubt. The more he reflected upon it the more resolute he became. His opinion was, moreover, confirmed by the best advice of legal and medical friends. If, therefore, the guardians, without naming another medical attendant, had simply ordered him to abstain from visiting their young ward, he would not only have refused to obey their order, but, without loss of time (in the character of *amicus curiæ*), he would have taken all the necessary steps to bring the whole of the extraordinary conduct of themselves and the schoolmistress judicially under the notice of his lordship the Master of the Rolls. He felt that if he displayed such gross inattention to the safety of his patient, Eva Sanger, as to leave her without medical aid, he should deserve, to use a memorable phrase of Lord Eldon, to be "hunted out of society!" for simple inhumanity.

(§ 3). I wish most distinctly to state, that although her health and outward appearance had improved, and she was going on favourably, Eva Sanger was still in an unsafe state. In mesenteric cases the actual outward symptoms are not an index to the disease, and a relapse may occur at any moment. To prevent such a disaster, which might have been fatal, it was essential that some medical practitioner should attend her at Brighton; and, in the absence of any intimation to the contrary, Dr. Clark had a right to assume that *what Mr. Thomas Sanger had agreed to in April respecting Worthing would apply to Brighton*[1] *also.* Accordingly Dr. Clark visited her at the latter place on three occasions, and afterwards made the following memoranda in his book:—

1865. MISS EVA SANGER.

August 3 Visit at Brighton.
" 12 } Visits at Brighton.
" 13 }
" 20 Visit at Brighton.

(§ 4). After remaining nearly a month at the seaside the little girl returned with Mrs. Twigg, at the end of August, to

[1] See pp. 27, 28, 116, 137.

Macclesfield House. Although she was far from being well in the eyes of a physician, he gladly noticed that the progress of the insidious malady had been checked, and consequently he considered it would not be necessary for him to see her so frequently as before. But he continued to visit her occasionally at Mrs. Twigg's school until the following month of December, 1865. Although his visits were now "few and far between," the same obstacles and impediments were constantly thrown in his way, in the shape of insulting hints from the schoolmistress that the child was quite well, and that his attendance was unnecessary; all of which seemed to be part of a regular system adopted to harass and perplex him, with the view of driving him from his post of duty. It was very plain that the various representations and remonstrances made from time to time respecting the alarming character of the malady and the danger of a relapse had wholly failed to awaken in her mind, or that of the acting guardian, the smallest sense of the extreme gravity of the case.

(§ 5). From the expressions made use of in the correspondence passing between them at that time, it seems they believed, or professed to believe, that the outward appearances of health which began to exhibit themselves were sure indications of the complete recovery of the child. In point of fact, however, the dangerous malady was only suspended, and in the absence of continual watchfulness might at any moment return in an aggravated form. Upon one occasion when Mrs. Twigg intimated that the frequency of his visits would be complained of by the guardians, Dr. Clark said, "*Really, Mrs. Twigg, after I have treated Miss Eva Sanger's case so successfully, I am astonished that any suspicion should exist or be expressed concerning my visits. I could not manage or be responsible for the case without seeing her as often as I do, and if the child were a pauper suffering from such a complaint, and I received no remuneration, I should see her quite as frequently.*" If he had weakly—I might say dishonestly—succumbed to the dictation of that aged schoolmistress, he would feel that he deserved to be classed with the "Parish Doctors" of former times —a class of functionaries very unlike the humane and skilful practitioners who, in this nineteenth century, take charge of our sick and suffering poor. The portrait has been sketched by the caustic pen of "nature's sternest painter, yet the best:" [1]—

> "Paid by the parish for attendance here,
> He wears contempt upon his sapient sneer,
> In haste he seeks the bed where misery lies,
> Impatience marked in his averted eyes;
> And some habitual queries hurried o'er,
> Without reply, he rushes to the door;

[1] The phrase applied to George Crabbe, the poet, by Lord Byron in his *English Bards and Scotch Reviewers*.

His drooping patient, long inured to pain,
And long unheeded, knows remonstrance vain;
He ceases now the feeble help to crave
Of man, and mutely hastens to the grave."[1]

(§ 6). In this state of affairs Dr. Clark received, on the 3rd of December, 1865, the following letter from the mother of the child :—

Euston Square, 3rd December, 1865.

Dear Sir,

I am anxious to know how my little girl does. It is my desire that nothing may be neglected which will assist in restoring her health. It would be satisfactory to me for you to have a consultation with the doctor who saw her before, as his opinion stands so high as to the disease that my dear Eva suffered from. After having had such an alarming illness all should be done that is possible to prevent a return of the complaint.

Yours respectfully,

Dr. Clark. J. SANGER.

This letter was written by Mrs. Sanger in the belief that Dr. Clark was specially appointed the medical adviser of her daughter with the sanction of the Court, and that part of his duty was to communicate with her from time to time respecting the state of the health of her children. She was more specially urgent upon this point, as she entertained and repeatedly expressed to him and to others her deeply-rooted doubts whether Eva was quite safe whilst under the charge of the uncle,[2] to whom she always imputed the most sordid motives.

(§ 7). Under all the circumstances, and remembering what had passed between himself and the chief clerk in the month of March preceding,[3] Dr. Clark felt that he could not disregard the letter of Mrs. Sanger. His own opinion being unchanged, he thought it absolutely necessary, in order to clear up the doubts which had been raised, and to enlighten the guardians as to the

[1] Crabbe's "Village," book i. The poet, we are told, was apprenticed to Mr. John Page, who was a surgeon, of Woodbridge, and through "the marriage of his daughter with the late famous Alderman Wood, an ancestor of a noble and learned equity judge, who is not more eminent as a lawyer than beloved as a man."—(See *Jeaffreson's Book about Doctors*, p. 279, and *Foss's Judges of England*, vol. ix., p. 319.)

[2] When Mr. John Chester, the stepson and junior counsel of the acting guardian, cross-examined him upon this subject, Dr. Clark gave the following answers :—"Mrs. Sanger's statement that her child was not safe while left under the charge of Thomas Sanger did not influence my conduct, *except that it made me more anxious to do my duty.* * * * My feeling of what was my duty was influenced by all the circumstances of the case, and amongst them the statement which Mrs. Sanger had made had weight. I thought that the mother and Mr. Thomas Sanger were upon very bad terms." —(*Cross-examination of Dr. Clark*, 2nd July, 1863.)

[3] See page 27.

real state of their ward, to appoint another consultation with Sir William Jenner. He made known his intention in a letter to Mr. Godwin :—

3, Mark's Square, W.C.
Saturday, 9 Dec., 1865.

Dear Sir,—

Mrs. Sanger has applied to me to ascertain the present state of health of her daughter, Miss Eva, after her alarming illness.

Even if the mother has committed faults, I think she should be informed of the health of her child, and in this view I think the guardians concur. Dr. Jenner and myself will meet in consultation at ½ past 3 o'clock next Monday, and see the young lady. The result shall be made known to you, *and also to Mr. Thomas Sanger, unless he wishes to attend and hear the opinion of Dr. Jenner and myself.*

Yours truly,
A. Godwin, Esq. JAMES CLARK.

(§ 8). With great inconsistency Mr. Godwin objected to the proposed conference ;[1] but at the same time, in his letter to the Doctor, he condescended so far as to admit that "Mrs. Sanger was entitled to every information as to her children's health !" [2] And how very consoling it must have been to the feelings of an English mother to be gravely told, on the high authority of the former clerk of her deceased husband, that after all she was really entitled to information respecting the health of her child ! And as to Mr. Thomas Sanger—the sole executor, the acting guardian, and the temporary parent of the child—he shamelessly took upon himself to say that "*the course Dr. Clark adopted was unnecessary and improper !*" and, flinging every feeling of humanity to the winds, he did not scruple to declare that "*the terms in which the Doctor referred to the mother were an uncalled-for interference on his part !*" [3] And then there was also just "one touch of nature" in his concluding words about fees. "*The fees,*" said Mr. T. Sanger, "*ought not to be paid out of the estate !*"

(§ 9). Now, although Mr. Thomas Sanger declined the invitation given him to be present and hear the opinions of Sir William Jenner and Dr. Clark, the latter was resolutely determined—not caring one tittle whether "the fees were paid out of the estate" or not !—that the consultation should take place. Accordingly it was held on the 11th December, 1865, at the house of Mrs. Twigg, who also, in obedience, I suppose, to the instructions she had received, made herself "conspicuous by her absence." The result was, that after another careful examination of the child,

[1] He had himself suggested such a consultation in his letter to the acting guardian of 25th July (see page 35).

[2] MS. Correspondence, No. 29. [3] MS. Correspondence, No. 31.

Sir William Jenner signed and handed to Dr. Clark the following certificate :—

December 11th, 1865.

I have this day seen Miss Eva Sanger in consultation with Dr. Clark. In March last I saw Miss Sanger. She was then very dangerously ill from disease of the mesenteric glands, greatly emaciated, &c. I find her now far better than we then expected she could be by this time. The child is plump, and generally in good condition, but *although looking well, the glands can still be felt larger than they should. For some years she will be liable to a recurrence of the same disease, or of similar disease, in other parts as that for which I saw her in the spring. It is my opinion that great attention should be paid to the state of her bowels and general health*, and that from time to time she should, although seeming pretty well, have a course of six weeks or two months of cod liver oil.

WILLIAM JENNER, M.D.

It is manifest from this certificate, that although nine months had elapsed and the most vigorous *medical* efforts had been employed, the disease was still in existence. The progress of the affection of the glands of the intestines had been suspended or arrested, but the malady was not yet completely eradicated. The mere outward appearances of health, so much relied on by the acting guardian and the schoolmistress as indications of the child's recovery, were simply and purely deceptive; and the greatest care and vigilance were therefore still needed to guard against a relapse, which might occur at any time and be very disastrous.

(§ 10). On the 15th December[1] Dr. Clark forwarded a copy of Sir William Jenner's certificate to Mr. Godwin, with an explanatory letter, from which I transcribe the following passages :—

8, St. Mark's Square, N.W.,
15th December, 1865.

Dear Sir,—

In my letter to Mr. Thomas Sanger of 24th July, I frankly expressed my views as to the necessity of the case being watched by a medical man, and the line of conduct it appeared to me right to pursue. It gives me pleasure to see that since that time the health of the young lady has much improved. But, knowing as I do the nature of her case, I consider that it is not proper or wise of the guardians to dispense altogether with professional assistance. In making this observation, however, I should wish Mr. Thomas Sanger to know that I am quite uninfluenced by any personal considerations of benefit to myself, but simply and solely by a determination to do what is best for the interest of the patient.

That the patient has not entirely recovered as you have heard, is shown by the inclosed opinion of Dr. Jenner, and, whether I am to have charge of the case or not, it is my deliberate judgment that the course of treatment he prescribes in that opinion can only be carried out effectually under the supervision of a medical man. If the guardians should disregard my repeated warnings upon this subject, and a relapse should occur, I shall certainly not be liable, as they may possibly be, to the censure of the Court.

And now let me add one word in conclusion. My young patient has been on the brink of the grave, and I am thankful to say that my exertions have

[1] MS. Correspondence, No. 32.

been so far crowned with a success that could not have been expected. No one knows better than you do, Mr. Godwin, what difficulties I have had to encounter, and how unjustly I have heretofore been censured. I now leave you to consider whether my conduct in the matter is difficult to understand or not.

So long as I have the professional charge of this ward of Court, my sense of self-respect will not allow me to deviate from the path of duty which my own judgment dictates.

Yours very truly,

A. Godwin, Esq. JAMES CLARK.

In reply, Mr. Godwin sent a letter the next day,[1] which contained nothing very material, except that, following in the wake of the acting guardian, he was betrayed into writing absolute nonsense by forgetting the same old maxim of Apelles,—

"Ne sutor ultra crepidam."

Thus, in reference to the advice of Sir William Jenner, that "*great attention should be paid to the general health*" of Eva Sanger, he remarked that it was "*exceedingly simple;*" and wished Dr. Clark to consult and show "proper attention to Mrs. Twigg!" As if that aged and infirm old lady, who had herself been under his care for many months for an internal malady— or indeed any other person except a medical man—*could* take charge of the "*general health*" of a patient like Eva Sanger! Such a charge would, indeed, be thought no light undertaking even by Sir William Jenner himself!

(§ 11). Passing with a smile from this little *jeu d'esprit* of Mr. Godwin, I may observe that on the same day (16th Dec.), he sent copies of Sir William Jenner's certificate and the Doctor's letters to the acting guardian, with the advice[2] that, "seeing the tone of Dr. Clark's letters, it would be prudent to be more than usually particular." Yet, taking no heed of the warning of his own solicitor, Mr. Thomas Sanger, on the 19th,[3] penned a very characteristic letter in reply, which clearly demonstrates, as a foregone conclusion, that, in stolid defiance of the opinions of Sir William Jenner and Dr. Clark, he had already resolved to deprive his niece of all further medical aid, whether she needed it or not.—"*Dr. Clark,*" he said, with pert *nonchalance*, "*has not in any way shown that there was a necessity for a consultation!*" And then, evidently believing that Sir William Jenner and Dr. Clark, and I suppose all other members of the profession, are swayed by some low, unworthy motive, he insultingly declared that "*as a guardian* [may I remind him, standing *in loco parentis?*] *of the children, I shall certainly object to his being a constant attendant for years upon my niece, on the mere chance*

[1] MS. Correspondence, No. 33. [2] MS. Correspondence, No. 34.

[3] Ibid., No. 35.

that the ailment may return!" Now be it remembered, nothing had been said about "constant attendance for years," but only of the necessity of "occasional visits" and "careful watching" by him or some other medical man, to prevent "the chance that the ailment *might* return." And it being plain that such occasional attendance was needed to guard against such a contingency, it follows that the acting guardian, *in the teeth of medical advice,* was resolved that it should not be afforded to the young ward of Court! And, lastly, alluding to the existence of some supposed feeling of "*irritation*" on the Doctor's part, and taking care that no other hand but his own should cast the last vindictive stone at the unhappy mother of the child, he added the words, so full of unworthy doubt and suspicion,—"*there is, perhaps, a prompter in the background!*" Let me say at once, that so far as Dr. Clark was personally concerned, the only "prompter in the background" was his own conscientious sense of duty, which he was not likely to yield up at the bidding of Mr. Thomas Sanger or his solicitor!

(§ 12). Long before this time Dr. Clark had learned, from disagreeable practical experience, that no argument, however cogent, and no reasoning, however convincing, would ever shake the real or assumed belief of the acting guardian and the schoolmistress, that Eva Sanger was perfectly cured, and that there was not the slightest danger of a recurrence of her malady. I think it was in the brilliant pages of *Junius* I first read the remark, that "when once a man is determined to believe, the very absurdity of the doctrine confirms him in his faith."[1] So it was with Mr. Thomas Sanger and Mrs. Twigg. For many months they had been "deaf as a post" to all Dr. Clark's representations and remonstrances, and thinking, therefore, that no benefit, but, on the contrary, much angry and unprofitable discussion might arise from the suggestion of Mr. Godwin, that a personal interview should take place, he wrote to the latter gentleman the following letter:—

3, St. Mark's Square, N.W.,
22nd December, 1865.

Dear Sir,—

I thought my two letters were plain, frank and simple, and not likely to lead to any mystification whatever.

The case presents itself to my mind in this way:—Both Mr. T. Sanger and Mrs. Twigg, travelling, as I think, beyond their province, take upon themselves to say that Miss Eva Sanger has perfectly recovered, and that she is, therefore, no longer in need of medical attendance.

On the other hand, I am of opinion that she is *not* quite well. Now, although I should feel much respect for their views upon other subjects, I consider that my judgment, in a matter of this sort, is more entitled to attention than theirs. But this difference having arisen, I determined, for

[1] Address to the King, Bohn's ed. by Wade, Letter xxxv. vol. i., p. 264.

various reasons, to have it settled, and for that purpose asked Dr. Jenner, who is a high authority upon such complaints, to see the young lady again. The result is before you, in the written opinion of that gentleman, which satisfies my own mind that my judgment was correct.

It is quite a mistake to suppose that my course has been influenced by Mrs. Sanger. Her letter of inquiry as to the health of her child was only one of the many reasons which induced me to seek the advice of Dr. Jenner. I would willingly have consulted Mr. T. Sanger and Mrs. Twigg, had they not already repeatedly expressed a decided opinion that Miss Eva was quite well, and I cannot possibly see what advantage or profit could arise by conferring with those who had already made up their minds.

The treatment prescribed by Dr. Jenner may appear to *you* extremely simple—yet you will observe, among other things, he says that "great attention should be paid to the state of the bowels and the general health." And allow me to say, that the skilful accomplishment of these objects—especially when there is a tendency to a recurrence of a malady like that from which Miss Eva Sanger has suffered—is one of the most important and onerous duties of a physician—indeed, it opens the widest field for the exercise of his talents.

I would willingly see Mr. T. Sanger if it were likely to lead to any useful result. But his views and mine are so entirely at variance, that I think it far better, instead of having a personal interview, for you to transmit to him my letters, if you will oblige me by doing so. Indeed, when I wrote to him with a full explanation of the case last July, he forwarded my letter to you, from which I infer that he wished you to be the channel of communication between myself and the guardians.

To be plain, let me say, that if under all the circumstances the guardians are prepared to take upon themselves the responsibility of forbidding my attendance upon the young lady, I am quite willing to be liberated. But until I have distinct instructions to that effect, I will not desert my post of duty until I have done everything that I think necessary for her welfare.

Yours very truly,

A. Godwin, Esq. JAMES CLARK.

(§ 13). Up to this time the interviews and correspondence between Mr. Godwin and himself had been courteous on both sides. But the reply Dr. Clark received on the 23rd, in reply to his letter of the 22nd, was couched in language so vulgar and so offensive, that, although he felt very considerable doubt as to the proper course to be pursued, he determined to withdraw from the case and throw the whole weight of responsibility upon the guardians. From that time to the present moment Dr. Clark has never seen Eva Sanger, and if no relapse has taken place it is indeed very fortunate: and he, for one, has good reason to feel both proud and thankful. He is proud to recollect that through many long weary months of anxiety, doubt, difficulty, insult and danger, he had sufficient moral courage not to desert his post of duty, either in thought, word, or deed! And he will indeed be truly thankful if he find that, by God's help, and the unflagging exertions that were made for her during that gloomy period, his patient has at length been providentially restored to health and to strength! But to God alone he most humbly and reverentially would ascribe the praise!

(§ 14). Some questions of high import as affecting orphan wards of Chancery may here arise for our consideration. Every medical man will concur in Sir W. Jenner's opinion that for *some years the little girl would be liable to a recurrence of the same disease, or similar disease of other parts.* Under such circumstances, *and remembering that her malady was still in existence*, I contend that the guardians were not justified in dispensing with the occasional attendance of Dr. Clark or some other medical man. No prudent parent, whether rich or poor, would have acted in such a way. Nor can such a line of proceeding be reconciled with the law requiring guardians to be persons of "*humane character.*" Most assuredly also the fact that a relapse did not afterwards occur cannot properly be pleaded by them in justification of their misconduct. It proves only that Eva Sanger's case had been skilfully and successfully treated. But, on the other hand, if a relapse had actually taken place, with fatal consequences to the child, could the guardians—who, after due warning, wilfully deprived their young ward of all medical aid—have been held criminally responsible or not? And if they might so act with impunity, who will have the hardihood to come forward and publicly maintain that such a state of things is not a scandal to humanity and a disgrace to the law of England?

(§ 15). In order to demonstrate the unreasonableness of the clamour that was raised with respect to his visits being too frequent, let me now invite the attention of my readers to a short synopsis of Dr. Clark's professional attendance from January to December, 1865, upon Eva Sanger.

Previously to her going to Brighton, he had visited her on eighty-three different days, viz.:—

Visits in January,	1865		5
„ February,	„		4
„ March,*	„		20
„ April,*	„		18
„ May,†	„		13
„ June,†	„		12
„ July,†	„		11
			83

But after her return from Brighton, Dr. Clark saw her on thirteen occasions only, viz.:—

* In the early part of March, Dr. Clark first observed symptoms of mesenteric disease, and during the remainder of that month and the whole of April, her life was in very imminent peril.

† During these months the most alarming symptoms were gradually subsiding, but she was still in an unsafe condition.

Visits in August,*	1865	...	...	2
„ Sept.†	„	...	...	5
„ Oct.†	„	...	...	3
„ Nov.†	„	...	...	2
„ Dec.†	„	...	...	1
				13

It is plain, therefore, that so long as the life of the child was in actual jeopardy, Dr. Clark visited her with the utmost assiduity. In prescribing for a malady so insidious, in which dangerous complications may arise at any moment, it is of course essential to watch the symptoms with the utmost vigilance, as the treatment of to-day might have to be changed, and might become quite unsuitable for to-morrow. But as the efforts made for her recovery became gradually successful, Dr. Clark's attendances were proportionately decreased in number, until they were at length reduced to a minimum, and made only by way of precaution against a relapse, which so often happens with patients suffering from mesenteric disease, and especially with those of naturally weak and delicate constitutions.

(§ 16). Now, looking at the very grave nature of Eva Sanger's malady, and the successful result of his labours, I ask whether, *so far as concerns the number and necessity of his visits*, Dr. Clark has rightly been spoken of as "A DEVOURER OF THE ESTATES OF ORPHANS?" Upon this part of the subject I will quote a passage from the sworn testimony of an eminent physician,[1] *whose personal knowledge of the case of Eva Sanger*, and high reputation, are sure to secure for it an attentive hearing:—

"*Having perused the bill of charges sent in by Dr. Clark, I am not prepared to say that the visits and journeys were unnecessarily frequent,* BUT ON THE CONTRARY, I AM DELIBERATELY OF OPINION THAT THE CASE OF EVA SANGER WAS ONE WHICH REQUIRED CONSTANT ATTENTION AND THE MOST WATCHFUL CARE ON THE PART OF HER MEDICAL ATTENDANT."

(§ 17). The simple truth is, that I have always been unable to fathom the reasons or motives which induced the acting guardian and the schoolmistress to thwart and interfere with the Doctor in the performance of his duties as the medical adviser of Eva Sanger. Did they doubt the soundness of the opinions deliberately given, after most careful examination, by Sir William

* These two visits were paid 26th and 29th August, immediately after her return from Brighton.

† During these months the child's health was gradually improving. But *the malady being suspended only, and not cured*, medical aid was still needed to sustain her general health, as the best means of preventing a relapse, which might have been very disastrous.

[1] Sir William Jenner's Affidavit, in Appendix, paragraph 6.

Jenner and himself, or did the obstructive system of tactics they pursued arise from ignorance, mere imbecility, or frivolity? or from the unworthy desire to save expense, without taking into account the consequences that might have resulted to the child from neglect? The plea of ignorance is clearly untenable, as they had repeatedly been warned of the perilous condition of the little girl. Must we, therefore, be driven to the conclusion that a mean and miserable desire to *save money* was their sole object? And that, in point of fact, the acting guardian placed pecuniary considerations in the balance with the paramount duty of restoring the child of a deceased brother to health and strength? And if so, what better proof could be given that money is indeed the root of all evil? And what right, let me ask, had a guardian, standing *in loco parentis*, to pursue such a dangerous—I might even say inhuman—course of conduct when dealing with a ward of the High Court of Chancery? Even if a considerable portion of the expectant fortune of Eva Sanger had been absorbed in saving her life, could any judge in the land venture to decide that the money was wasted or improperly expended? In short, was the child's money of more account than her life? The supposition that simple parsimony had great influence with the acting guardian derives some countenance from a remarkable passage in his own affidavit,[1] which runs thus:—

"As the income arising from my niece's property is comparatively small in amount, I considered it my duty to protect her property, as well as watch over her health. With that view, I remonstrated against the unnecessary (?) attendance of Dr. Clark."

(§ 18). Yet, however anxious he might have been to save money, he was far too prudent a man to incur the responsibility of dismissing Dr. Clark altogether. The strategy pursued by him and the schoolmistress was much more wily, and no doubt it was meant to accomplish the same purpose, but in a safer way. By disputing the judgment of Sir William Jenner and himself, by continually throwing some impediment in his path, and by insulting remarks as to his visits being unnecessary, they probably hoped to tire him out, and so disgust Dr. Clark with the work he had in hand, that he should be glad to retire of his own accord, and so obviate the danger to themselves that might probably arise if they had forbidden him to visit his patient. That crooked policy seems, indeed, to be almost openly avowed by the acting guardian in the same affidavit,[2] in which he says:—

"I did not feel myself justified in forbidding his visits altogether, because the warnings which he expressed to me that I should be responsible for the

[1] Thomas Sanger's Affidavit, 7th July 1868, par. 14.

[2] Ibid., 7th July, 1868.

consequences if she were neglected *naturally caused me some alarm. Moreover, I was in constant expectation of hearing that he had ceased to visit her.*"

On the other hand, let us suppose for a moment that Mr. Thomas Sanger and Mrs. Twigg did foolishly imagine that Sir William Jenner and Dr. Clark were in error, and that the child was restored to health after she returned from Worthing. If that were so, was it not incumbent upon them, in the first place, to satisfy themselves as to the correctness of their views by summoning some other medical man to see the young ward? In plain language, was it not an act of unjustifiable presumption on their part, to set up their own opinion in opposition to Sir William Jenner's and Dr. Clark's, or in fact to meddle at all in so very serious a matter? Was either competent to detect and examine the secret seeds of disease? Will any man of reflection believe that the child was well, upon the mere *ipse dixit* of Mr. Thomas Sanger, or of his wife, or of the schoolmistress? Is it enough for them to say, in opposition to the deliberate judgment of Sir William Jenner and Dr. Clark, that after the child's return from Worthing, Mrs. Twigg thought "the disease was mastered," because "her appetite" was good? Were they really so ignorant as not to know that this was only a vigorous effort of nature to recover from the fearful state of debility and emaciation to which disease had reduced her? Is it not also an insult to our mental faculties to be gravely told that the elder sister, then a schoolgirl of seventeen, held the same opinions on this subject as the uncle and the schoolmistress? Again, are we expected to pay attention to the views of Mr. Thomas Sanger and his wife, and the schoolmistress, merely because they were all persons of some experience and of mature age? Every one will allow that old age, when it is associated with wisdom, should command our sympathy and respect, and even our reverence. But does old age necessarily bring with it either wisdom or ordinary discretion? Does not the very case we are now discussing prove quite the contrary? Are there no foolish old men or women in the world? And "can grey hairs make folly venerable?"

(19). Seeing, therefore, the utter hollowness and insufficiency of all the grounds assigned by way of justification for the extraordinary conduct of the acting guardian, we are driven back in bewilderment to the original question,—What ideas, reasons or motives could exist in the mind of Mr. Sanger to prompt his interference with the Doctor whilst discharging his duties as the medical attendant of his niece? But here my pen must stop. It is not permitted to any man, and especially to one so frail as myself, to pry into or condemn the hidden thoughts, wishes, or motives of his fellow-creatures. We must humbly leave all such solemn

inquiries to the all-seeing eye and the unerring judgment of Him "unto whom all hearts be open, all desires known, and from whom no secrets are hid."

(§ 20). In concluding this portion of my narrative, I may observe, that when pondering over the singular circumstances connected with the case of Eva Sanger, I am reminded of the language which, in 1800, Henry Bickersteth, the late Lord Langdale (then a medical student in London), employed to dissuade his younger brother Robert from entering the profession :—

"With regard to the degree of pleasure or inconvenience that is felt in the practice (of medicine), I must own that, as far as I have been able to observe, the satisfaction which is felt on the recovery of a patient is by no means equal to the anxiety, nay, even misery, which a feeling mind may have previously experienced during his sickness."[1]

It must be conceded that the observation of Lord Langdale is very just and well founded. Yet the "anxiety, nay, even misery," to which he touchingly refers would seem to the physician to be "light as a feather" when viewed in comparison with the heavy load of care, responsibility and mental anxiety he experiences when charged with the case of an unprotected orphan child like Eva Sanger,—

> "Half dead and panting from the doubtful strife
> Of nature struggling in the grasp of death."[2]

And, let me observe further, how much this "misery" must be intensified when he finds that his zealous efforts are thwarted, his orders disobeyed, and even the earnestness and fidelity he displays in the discharge of his arduous duties are imputed to mean, sordid, unworthy motives, by those from whom he had a right to expect sympathising support and willing obedience.

[1] Henry Bickersteth was the son of a country surgeon of local repute practising at Kirkby Lonsdale, Westmoreland. He studied medicine in London, Edinburgh and Cambridge, and it is said that he was professionally consulted in his father's house so late as the year 1807. But, becoming senior wrangler at Cambridge in 1808, a brighter prospect was opened to him: he abandoned physic, and after many years' successful practice at the bar, he was made Master of the Rolls, and created Baron Langdale in the year 1836.—See *Hardy's Memoirs of Henry, Lord Langdale*, vol. ii., pages 4, 5, 22, 236.

[2] *Art of Preserving Health*, book ii., "Diet." A beautiful poem, by John Armstrong, who graduated in medicine at Edinburgh in 1732, with much distinction, and afterwards practised as a physician in London.—See *Anderson's Collection of the Poets.*

CHAPTER VII.

§ 1. Mr. Serjeant Atkinson applies for Account.—§§ 2-3. His Conduct and Affidavit.—§ 4. Short Claim delivered—Full Particulars requested.—§ 5. Certificate of Professor Russell Reynolds.—§ 6. Delivery of Full Accounts A and B and Analysis.—§ 7. The Guardians Suggest an Application to the Court.—§§ 8-10. Medical Arbitration proposed and rejected—The Guardians agree to originate Proceedings.—§§ 11, 12. Subsequent Correspondence and Transactions.—§§ 13-17. Withdrawal of any Claim upon the Guardians personally—Final Refusal of Guardians to initiate Proceedings as promised—Strange Procedure of Mr. Godwin.

"Honesty's a fool,
And loses that it works for."
Othello, *act* iii., *scene* 3.

"God and the doctor we alike adore,
But only when in danger, not before;
The danger o'er, both are alike requited—
God is forgotten, and the doctor slighted."
Pope.

(§ 1). Several months elapsed after his professional attendance on the young ladies had ceased before Dr. Clark was requested by one of the guardians, Mr. Serjeant Atkinson, to deliver an account of his charges.

(§ 2). I avail myself of this opportunity to state that, as regards Mr. Serjeant Atkinson and Mrs. Atkinson, they had, from the first appearance of the alarming illness of Eva Sanger, shown the greatest anxiety for her speedy recovery to health. Although justly open to severe rebuke for allowing the schoolmistress and the acting guardian to neglect the advice of Sir William Jenner and Dr. Clark with respect to the necessity of removing the child from London to a farm-house, I willingly acknowledge that their conduct was in marked contrast with that of Mr. Thomas Sanger, who had treated the matter with so much questionable levity or unconcern. Indeed, the learned serjeant very kindly expressed his approbation of Dr. Clark's conduct, and with evident feeling remarked that the change in the child's condition was in his opinion "*no less than a resurrection.*" I hope I shall not be thought cynical in

observing that he might well make such a remark, if it be true that his co-guardian and himself had previously made arrangements for her funeral. But he went further, and told the Doctor that "*no money could adequately compensate him for his services,*" —that the funds of the young ward were ample, and that he ought to be very liberally paid; and in fact, sent for him afterwards to say that he had recommended the parents of a young lady of high social position to place their sick daughter under his care.

(§ 3). Yet, whilst the proceedings were pending before the chief clerk of the Master of the Rolls, the learned serjeant made an affidavit the like of which, in my humble opinion, it will not be easy to discover among the records of the Court of Chancery:—

"Affidavit of George Atkinson, of Serjeants' Inn, Chancery Lane, London, Serjeant-at-law, one of the defendants in this cause.

"1. Although unable to give any evidence as to the propriety or otherwise of the charges made by Dr. Clark for his attendance upon the Misses Sanger, the proceedings which have been taken on behalf of myself and co-trustee to bring the charges under the notice and judgment of this honourable court have been from time to time communicated to me, and have had and still have my full concurrence and approval."

Taking this document in connection with his previous statement—when his young ward was so ill—that he had "no permission to give" as to whether Dr. Clark should visit her or not; and remembering also his letter of the 30th of May respecting the farmhouse and Mrs. Twigg,[1] and his opinion that the recovery of the child was "like a resurrection from the dead," and that "no money could compensate the Doctor for his services;" and recollecting, moreover, that instead of "bringing the charges under the notice and judgment of the Court," the promise to that effect made by the solicitor of the guardians in their name was (as I shall presently show) perfidiously broken, I must really own that I was much staggered by the affidavit. Even now I have not quite recovered from my surprise. So, for the sake of the learned serjeant himself, I will offer not a single word of comment, but simply leave him to unravel the enigma if he can.

(§ 4). In conformity with the request of Serjeant Atkinson, about the end of April, 1866, Dr. Clark wrote a note to the paternal uncle and acting guardian, stating that his claim for professional services would amount to £300 and upwards, without specifying any details of the items. It is not, indeed, usual when physicians and surgeons send in their accounts, to supply the particulars of every visit or attendance, unless it be specially requested. It appears that the acting guardian forwarded the

[1] See page 32.

account to his solicitors, who requested Dr. Clark to send full particulars and items. The following is a copy of their letter :—

3, King's Bench Walk, Temple, 1st May, 1866.

Dear Sir,—

Mr. T. Sanger has handed to us your note and accounts for attendance on the Misses Sanger. *The guardians and trustees, as you are aware, have no personal responsibility or interest* (!) *in the matter. They would, however, support any application to the Court for payment of any reasonable sum,* but they cannot conceive that any such amount as that claimed can be right; and in order to enable them to give an opinion upon this point, we have to request that you will send us full particulars and items of the accounts. Yours obediently,

Dr. Clark. GODWIN & PICKETT.

In making out the accounts it was considered by Dr. Clark and others that the position of the patients, the large amount of their reputed fortunes, and the important nature of the medical and other services rendered, would justify him in charging the full fees which the law would allow to every duly qualified and duly registered physician. We were confirmed in this view by the various expressions already referred to, of Mr. Serjeant Atkinson, to the effect that the recovery of Eva Sanger was like a resurrection; that no money could compensate the Doctor for his services; and that the family were rolling in wealth. At the same time let me say that every one of us would have scouted as dishonourable any wish or attempt to make the claim larger in amount than the circumstances warranted, or take advantage of the position of the young ladies as orphan wards of the Court of Chancery. The tone of the letter is remarkable. If it expresses the feelings of the guardians, it may perhaps afford some clue to the whole mystery of their conduct. "The guardians have *no responsibility or interest,*" forsooth! There is, indeed, a frankness in the statement that would be quite charming in any case less serious than that of Eva Sanger! Appointed specially to be her guardians, on account of their supposed capacity, their fitness for the office, and their humane character, their own solicitors quietly tell us that they have "no responsibility or interest" in matters that closely touch her welfare!—Was not the conduct of the acting guardian, from beginning to end, in perfect harmony with that avowal? Did he ever act as if he had or felt any "responsibility" or "interest?"

(§ 5). Leaving my readers to find a solution of these questions, and various others which they cannot fail to awaken, I may say that, feeling convinced the guardians would raise every conceivable objection to his accounts, Dr. Clark thought it very desirable, in the first instance, to obtain the opinion of some eminent physician connected with one of the London hospitals, and he therefore showed his accounts (amongst others)

to Dr. Russell Reynolds, and explained to him all the circumstances. He gave the following certificate :—

CERTIFICATE OF PROFESSOR REYNOLDS.

"38, Grosvenor Street, W.

"The charges made by Dr. Clark for attendance upon the Misses Sanger, and detailed in the papers marked A and B respectively, appear to me to be such as are usual for professional services of the kind rendered by Dr. Clark.

"May 1st, 1866. J. RUSSELL REYNOLDS, M.D., F.R.C.P.L."

(§ 6). Dr. Clark forwarded to Messrs. Godwin and Pickett, on the 16th of May, a copy of the certificate of Dr. Russell Reynolds, together with the full accounts marked A and B, of which I subjoin an analysis :—

ACCOUNT "A."—EVA SANGER.	£	s.	d.
5 Visits in January, 1865	5	5	0
4 „ February, „	4	4	0
20 „ March, „	21	0	0
Fee to Sir Wm. Jenner (March 23)	2	2	0
18 Visits in April, 1865	18	18	0
Journey to Worthing, 23rd April [1]	31	10	0
„ 30th	31	10	0
13 Visits in May	13	13	0
Fee to Sir Wm. Jenner (May 13)	2	2	0
12 Visits in June	12	12	0
11 „ July	11	11	0
Journey to Brighton, August 4 [2]	26	5	0
„ „ 12	26	5	0
„ „ 20	26	5	0
2 Visits in Town „	2	2	0
5 „ Septr.	5	5	0
3 „ Octr.	3	3	0
2 „ Nov.	2	2	0
1 „ Decr.	1	1	0
Fee to Sir Wm. Jenner, Dec. 11th	2	2	0
96 Visits	£247	16	0

Sundry consultations with Sir Wm. Jenner, not specially mentioned, and with Mr. Thomas Sanger, Mrs. Sanger, Mr. Serjeant Atkinson, Mr. Godwin, Mr. Sweeting, and Mr. Lydall, and much correspondence, and accompanying Mrs. Sanger to see Miss Eva, by order of the chief clerk, of which some particulars are set forth in the following copy of "Exhibit Z: "—

1865.

March 23 Visit to Dr. Jenner, fixing consultation.
Visit to Mr. Thos. Sanger at 36, Doughty Street, when he requested Dr. Clark to write to him respecting Eva Sanger.

24 Visit to Mr. Godwin, at King's Bench Walk. Writing explanatory letter to Mr. Thomas Sanger, as requested.

[1] Worthing is more than 60 miles from Dr. Clark's place of abode.

[2] Brighton is 50 miles from Dr. Clark's place of abode.

March 29 *Attending at Judge's Chambers; order made for the mother, Mrs. Sanger, to see Eva Sanger in Dr. Clark's presence.*
31 *Attendance with mother of Eva Sanger at Mrs. Twigg's, by order of chief clerk.*
March & April Six letters to Mrs. Sanger respecting Miss Eva.
April 15 Consultation with Mr. Godwin in the Temple, respecting Miss Eva Sanger.
20 Consultation with Mr. Godwin in the Temple, respecting Miss Eva Sanger.
21 *Consultation with Mr. Thomas Sanger, 36, Doughty Street, concerning Miss Eva Sanger.*
May 9 *Attendance with mother of Eva Sanger at Mrs. Twigg's.*
10 Journey to Harley Street, and consultation with Dr. Jenner concerning Miss Eva.
11 Consultation with Mr. Godwin at King's Bench Walk, Temple, concerning Miss Eva.
13 Consultation with Mr. Godwin in the Temple, concerning Miss Eva.
18 Writing long explanatory letter to Mr. Godwin, with result of consultation with Dr. Jenner.
19 Interview and conference with Mrs. Sanger, the mother of Eva.
20 Consultation with Mr. Godwin in the Temple.
24 Letter to Mr. Godwin.
25 Consultation with Mr. Godwin in the Temple.
Interview and conference with Mrs. Sanger.
Letter to Mr. Sweeting.
29 Consultation with Mr. Godwin in the Temple.
30 *Consultation with Mr. Serjt. Atkinson at Serjeants' Inn.*
June 2 *The like*
The like with Mr. Godwin in the Temple.
4 Interview and conference with Mrs. Sanger in Euston Square.
12 The like with Mr. Godwin.
17 Answering two telegraphic messages from Mrs. Sanger as to her daughter's health.
26 Conference with Mr. Sweeting in Nicholas Lane.
July 8 *Interview with Mr. Thos. Sanger in Doughty Street.*
10 Answering telegraphic message from Mrs. Sanger as to her daughter's health.
Conference with solicitor, who advised Dr. Clark to disregard every obstacle, and not to abandon the child.
17 Interview and conference with Mrs. Sanger in Euston Square, on her letter of previous day.
18 Consultation with Mr. Godwin in the Temple.
24 Long and explanatory letter to Mr. Thomas Sanger.
Aug. 26 Interview and conference with Mrs. Sanger in Euston Square.
27 The like.

Aug. 28	Consultation with Mr. Lydall in Southampton Buildings.			
29	Interview and conference with Mrs. Sanger in Euston Square.			
30	The like.			
Sept. 1	Three visits and long attendance on Mrs. Sanger.			
4	Interview and conference with Mrs. Sanger.			
6	The like.			
9	The like.			
16	The like.			
29	The like.			
Oct. 4	The like.			
10	The like.			
Nov. 22	The like.			
27	The like.			
Dec. 8	Consultation with Dr. Jenner in Harley Street.			
9	Letter to Mr. Godwin.			
15	Interview and conference with Mrs. Sanger in Euston Square.			
	Very long letter to Mr. Godwin, with copy of Dr. Jenner's opinion.			
22	Long explanatory letter to Mr. Godwin.			
29	Consultation with solicitor on letter of Mr. Godwin.			
	Various other visits, conferences, and letters, of which no memorandum was made by Dr. Clark at the time.	42	0	0
		£289	16	0

ACCOUNT "B."—LILLY LAURENCE SANGER.

4 Visits at one guinea[1] in January, 1865		4	4	0
2 „ „ half guinea „ „		1	1	0
5 „ „ one guinea, February „		5	5	0
1 „ „ half guinea „		0	10	6
1 „ „ one guinea, March „		1	1	0
11 „ „ half guinea, „ „		5	15	6
5 „ „ „ „ April „		2	12	6
29 Visits.	Total	£20	9	6

(§ 7). A few days afterwards Dr. Clark received from Messrs. Godwin and Pickett a letter, from which I quote the following passages :—

15, King's Bench Walk, Temple, 21st May, 1866.

Dear Sir,

We communicated to our clients your letter of the 16th instant, and the accompanying documents, and in reply they instruct us that they consider the accounts and charges unreasonable, and such as the Court would not sanction.

[1] When Dr. Clark saw her alone.

[2] When Dr. Clark saw her sister on the same day.

The Court would, no doubt, upon a proper application, and upon its being shown that you were reasonably and properly called in by Mrs. Twigg, give directions for the discharge out of the funds belonging to the young ladies of your fair and reasonable charges. * * * * * They cannot, however, initiate such a step, *but if you, or Mrs. Twigg, or the next friend of the young ladies think fit to do so, they will facilitate the obtaining the directions of the Court.* Yours obediently,

Dr. Clark. GODWIN & PICKETT.

(§ 8). Now, it is usual in the profession, when patients object to the charges of their medical advisers, to refer the disputed accounts to the arbitration of medical men, in order to avoid expensive litigation. Accordingly, Dr. Clark wrote to the solicitors of the guardians in the following terms :—

3, St. Mark's Square, N.W.
23rd May, 1866.

Dear Sirs,

If the opinion of Dr. Russell Reynolds as to the fairness and reasonableness of my charges for professional attendance upon the Misses Sanger should be thought insufficient, I am quite willing to submit the question to the decision of a tribunal, which, you must acknowledge, would be impartial.

Let the guardians name some physician attached to one of our London hospitals, and I will name another, and let those two gentlemen name a third physician of equal standing, who shall decide if they differ in opinion, and let the guardians and myself be bound by the decision so given, whatever it may be.

I certainly feel that only the decision of such arbitrators and umpire could be regarded as satisfactory and impartial in a case of this description.

If this offer should be declined, I think you ought in fairness to say in what manner you would wish me to apply to the Court to have my accounts settled in the way you suggest.

Yours truly,

Messrs. Godwin and Pickett. JAMES CLARK.

(§ 9). With reference to the propriety of his offer of arbitration, Dr. Clark would observe that there is an entire concurrence of opinion amongst the medical witnesses. Sir William Jenner said that "*the fair way of settling the amount in case of dispute would have been to refer the account to medical arbitrators, and that the mode of arbitration suggested by Dr. Clark was reasonable and judicious, and well calculated to lead to a satisfactory decision.*"[1] Mr. B. B. Orridge, an eminent medical agent, said that "*when disputes arise with respect to medical charges, the proper course is to refer the disputed account to friendly arbitrators. I am clearly of opinion that the arbitration proposed by Dr. Clark was very fair and reasonable, and if that suggestion, or any fair counter-proposal for arbitration had been accepted by the guardians, with the approval of the Court, the great trouble and expense caused by litigation might have been wholly avoided.*[2] And Dr. Collins also

[1] Sir William Jenner's Affidavit, in Appendix No. 1, paragraph 6.

[2] Mr. Benjn. B. Orridge's Affidavit, in Appendix No. 8, paragraphs 3 and 9.

stated that "*the mode of arbitration proposed by Dr. Clark was fair, reasonable, and judicious.*"[1]

(§ 10). Yet in reply to Dr. Clark's offer the solicitors wrote on the 24th May, to say that the guardians "had no authority to consent to a reference"—meaning only, I suppose, that wards of Chancery being concerned, the previous leave of the judge would be requisite; for of course there can be no doubt that suits and claims in equity may be referred by order of court in like manner as actions in the courts of law.[2] In the same letter they made a distinct promise (which they afterwards violated) to relieve Dr. Clark from the unpleasant task of applying to the judge, by originating the necessary proceedings themselves on behalf of their own clients, the guardians :—

3, King's Bench Walk, Temple,
24th May, 1866.

Dear Sir,—

Independent of the objections that exist to your suggested reference the guardians have no authority to consent to it.

If you have any difficulty about applying to the Court, we will, if you wish it, and upon the understanding that the guardians are subject to no personal liability, apply to the judge in chambers for an order for payment to you of such sum as the Court may think proper, for your attendance upon and medicine supplied to its wards; and we need scarcely say that *we believe the Court would see, as our clients would also desire, that you were fairly and properly remunerated.*

It would be necessary to support this application by an affidavit from you showing the necessity of your attendances, &c., and the nature and circumstances of the illness, and the propriety of the charges, and other corroborative and explanatory evidence, *upon the details of which we should have to communicate with you after receiving your assent to this course.*

Yours obediently,

Dr. Clark. GODWIN & PICKETT.

(§ 11). But being still anxious, if possible, to avoid all useless and unnecessary law expenses, Dr. Clark wrote to them on the 26th of May, 1866, in the following terms :—

3, St. Mark's Square, N.W.,
28th May, 1866.

Dear Sirs,—

I should still wish, if possible, to leave the amount of my account to the decision of medical men; that being, as I believe, the usual mode of proceeding in cases of this description. But I have no reason to doubt that the judge in chambers would decide the question between me and the estate with equal justice.

It has been suggested to me that *all difficulty as to the power of your clients to consent to an arbitration would be removed by your making an application to the judge in chambers for leave to refer* the matter in the mode I have mentioned. Will you kindly inform me whether this course be practicable or not?

Yours truly,

Messrs. Godwin & Pickett. JAMES CLARK.

[1] Dr Collins's Affidavit, in Appendix No. 6, paragraph 21.

[2] "In like manner as an action in the courts of law, so a suit in equity and all matters in difference may be referred by order of a court of equity, and obedience to it will be enforced by the usual process of the court."—Russell's *Power and Duty of an Arbitrator*, p. 9, ed. 1864.

To which he received from the solicitors an answer in the following terms :—

3, King's Bench Walk, Temple,
28th May, 1866.

Dear Sir,—

We do not think the suggestion in your letter practicable. We have no doubt the chief clerk, *who is, of course, familiar with all matters affecting wards of Court*, will have much difficulty[1] in coming to a conclusion. Should he, however, he will doubtless seek or require such assistance as he may consider desirable.

Yours obediently,
GODWIN & PICKETT.

Dr. Clark.

Upon what grounds could it be truly said that his "suggestion was not practicable?" Is it contended for a moment that the Court of Chancery has no jurisdiction in the case of its wards, to order that disputed matters of account shall be referred to arbitration? Why, then, did the guardians refuse to apply to Lord Romilly for leave to refer? Who will be bold enough to say that the chief clerk of his lordship is a competent person to settle the remuneration of a medical man in a case like Eva Sanger's? And why did they seek to drag Dr. Clark into Chancery, and thus saddle the young wards with law expenses, from which it was very certain that they at least could derive nothing—far larger, perhaps, in amount than the whole of his claim? But without stopping to discuss and expose more fully the frivolous reasons assigned for driving the case into Chancery, I will only remark, that all attempts on his part to get his account settled without having recourse to legal proceedings being entirely fruitless, Dr. Clark was reluctantly compelled to fall back on the promise held out to him by Messrs. Godwin and Pickett, that the guardians would themselves bring the matter before the judge in chambers for legal adjudication.

(§ 12). Finding, however, that no steps had been taken by Mr. Godwin to bring the question before the Court, I, as Dr. Clark's solicitor, called several times upon him in the Temple, and reminded him of the promise contained in the letter of his firm of 24th of May preceding. The statement subsequently made on oath by me is so singular, that I will quote the words :—

"Mr. Godwin referred me first to Messrs. Philbrick and Son, of Lincoln's Inn Fields, as the solicitors of the infant plaintiffs, and afterwards to a Mr. Smith, of Furnival's Inn, as their solicitor. But when I and my clerk called on those gentlemen, I came to the conclusion that Mr. Godwin was trifling with Dr. Clark, inasmuch as, although those gentlemen were successively named as the solicitors of the infant plaintiffs on the record, yet in point of fact they had acted only as the agents and under the instructions of Mr. Godwin, and the infant plaintiffs had not in truth been represented by any independent solicitor."

I am not aware that any *sworn* contradiction to this startling

[1] *Sic.*

statement has ever been offered by Mr. Godwin on the part of the guardians. What painful thoughts are thus suggested to every feeling and impartial mind, with regard to the mode in which the estates of orphan wards are sometimes dealt with in the Court of Chancery!

(§ 13). It cannot, therefore, be a matter of wonder that I failed to obtain any assistance from Messrs. Philbrick and Son, or Mr. Smith. So I called once more, on the 2nd of February, 1867, on Mr. Godwin, who again offered to bring the question before the Master of the Rolls, *if Dr. Clark would waive his right of proceeding against them personally, by means of an action at law or otherwise, for the recovery* of his claim. I agreed to the suggestion, and thereupon Mr. Godwin prepared and handed to me the draft of a letter which Dr. Clark subsequently signed. It was in the following words :—

3, St. Mark's Square, N.W.,
February 8th, 1867.

Dear Sirs,—

I am anxious to get the matter relating to my account with the Misses Sanger settled, and perfectly understanding and admitting, without prejudice to my claim upon the fortune of the infants, that your clients, the trustees and guardians, are in no way personally responsible, or considered as such, I shall esteem it a favour if they will authorise you to bring my account under the consideration of the Court, that such sum as may be considered reasonable may be directed to be allowed in respect of it.

Yours truly,

Messrs. Godwin & Pickett. JAMES CLARK.

(§ 14). By signing that letter the doors of the courts of law were virtually barred against Dr. Clark by his own voluntary act. He stripped himself of all right to sue the guardians. He felt sure that his solicitor would never have submitted such a document to him if he had the smallest suspicion that the guardians would fail to fulfil their engagement. Most assuredly, also, he had personally no desire to place himself in the position of the unfortunate man who went down from Jerusalem to Jericho, and fell among thieves. But Mr. Godwin had positively promised that the matter should be brought by the guardians before Lord Romilly, and how could we doubt the word of an honourable man?

(§ 15). Yet within a few days afterwards, on the frivolous pretext that I had prepared and filed the affidavits of Sir William Fergusson, Professor Reynolds, Dr. Reeve, and others in support of Dr. Clark's claim, the solicitors of the guardians manœuvred out of the arrangement, and refused to bring the case, as promised, before the equity judge for decision. I was "so astonished at what appeared to me to be a manifest act of perfidy" on the part of the guardians, that I felt almost unable to advise him as to the proper course to be pursued under the peculiar circumstances in which Dr. Clark was thus placed. The following is an extract from my affidavit :—

"The painful impression was forced upon me that in consequence of my having placed undue faith in Mr. Godwin I had exposed myself to the imputation of sacrificing or betraying the rights and interests of my own client."

(§ 16). Subsequently a fruitless attempt was made in June, 1867, to induce the solicitor of the guardians to initiate the necessary proceedings in the Court of Chancery. But he would *neither agree to fulfil his promise nor consent to cancel and give back to the Doctor the letter of the 8th of February, which he signed only upon the faith of such promise.*

(§ 17). Under such circumstances the reader will well understand the feelings of vexation and annoyance which induced me to say that "since I was first admitted to practice in Easter term, 1850, I did not recollect any instance in which I had been so completely deceived, entrapped, and cajoled, as I was by Mr Godwin on that occasion."

CHAPTER VIII.

§ 1. RETROSPECT. — §§ 2, 3. COMMENCEMENT OF LITIGATION. — § 4. CHANCERY JUDGE'S CHAMBERS. — §§ 5, 6. THE MANAGING OFFICIALS—CHIEF CLERKS—JUNIOR CLERKS —ASSISTANT CLERKS—THEIR JUDICIAL COMPETENCY QUESTIONED. — §§ 7-10. IDLE AND MISCHIEVOUS CONDUCT OF CHIEF CLERKS IN CERTAIN CASES—THEIR PRETENDED DECISIONS NUGATORY—THEIR REFUSAL TO GIVE REASONS CENSURED — EVIL RESULTS OF THE SYSTEM TO POOR SUITORS. — §§ 11-15. THE NEW "CHIEF CLERKS" WEIGHED IN THE BALANCE WITH THE OLD "MASTERS IN ORDINARY" AND FOUND WANTING.

"Nothing could, I think, be more detrimental to the interests of the suitors of the court, than that the Chief Clerks should be put in the position which the Masters formerly held."—LORD JUSTICE SIR GEORGE TURNER.[1]

"It is extremely important that it should be understood with reference to the practice in Chambers, that the Chief Clerk never makes any order which can be called his own order in any sense. All the orders made in Chambers are the orders of the Judge."—V. C. SIR W. PAGE WOOD *(now* LORD CHANCELLOR HATHERLEY.)[2]

(§ 1). At this stage it may be desirable to take a retrospective view of the circumstances of the case. Dr. Clark's offer to refer the bills to medical arbitrators had been declined. The promises of the guardians to facilitate an application to the judge in chambers, and their subsequent promise to initiate the necessary proceeding in their own names, had been broken. And, at the dictation of their own solicitor, Dr. Clark had signed a letter entirely waiving his rights against them in a court of law. At that moment it almost appeared that he had denuded himself of all practical means of enforcing payment by the guardians of any remuneration for the unwearied and successful services he had rendered to the young ward for a period of no less than eleven months.

(§ 2). In this state of affairs the papers were laid before his junior counsel,[3] and under his advice, on the 13th of the

[1] Re *The Agricultural Cattle Insurance Company* (3 June, 1861), De Gex, Fisher, and Jones's Reports, vol. iii., p. 194.

[2] Hayward *v.* Hayward (11 March, 1854). Kay's Reports, *Appendix* xxxiii., and S.C. *nom.* Hayward *v.* Price, 2 Eq. Rep., 436.

[3] F. Hoare Colt, Esq., of Lincoln's Inn.

following month of July, his solicitors applied for a summons, which was granted by Mr. Marshall,[1] one of the chief clerks of his lordship the Master of the Rolls, in the following form:—

In Chancery. 1857. S., No. 205.

Between LILLY LAURENCE SANGER and EVA SANGER, by HENRY ALEXANDER NEWELL, their next friend, Plaintiffs,
and
THOMAS SANGER, JANE SANGER, widow, and GEORGE ATKINSON, Defendants.

Let all parties concerned attend at my Chambers, Roll's Yard, Chancery Lane, Middlesex, on Thursday the 18th day of July, 1867, at half-past eleven of the clock in the forenoon, on the hearing of an application on the part of JAMES CLARK, of No. 3, St. Mark's Square, Regent's Park, in the county of Middlesex, M.D., that the sum of £310 5s. 6d., *now due to the said James Clark as the medical attendant, duly recognised and sanctioned by this Honourable Court, of the infant Plaintiffs, Lilly Laurence Sanger and Eva Sanger*, may be forthwith paid to the said James Clark by the guardians of the said infant plaintiffs, out of the trust estate, or in such other manner as I may direct; and that the costs of and incidental to this application and consequent thereon, should also be paid by the said guardians out of such trust estate or otherwise, as aforesaid. *Dated this 13th day of July*, 1867.

ROMILLY,
Master of the Rolls.

To the Plaintiffs and the Defendants, Thomas Sanger and George Atkinson.

(§ 3). It will be seen that the summons which his solicitors issued proceeded upon the assumption that, if not the medical attendant appointed by the Court of Chancery, Dr. Clark had, at least, been *recognised as such* by the previous chief clerk of the judge. Indeed what other meaning can be attached to the order of 29th March, 1865?[2] At any rate it was said that he had a sufficient *locus standi*, and whether the lawyers thought so or not he was bound to make the attempt. At the same time he cannot justly be accused of harbouring any fondness of litigation. He had strained every nerve to arrive at some amicable arrangement with the guardians, but all his efforts were in vain; and he was advised that no alternative course was open to him. If, therefore, "it has pleased time and fortune to lie heavy upon him" in this business of Eva Sanger, he may still console himself with the thought that he is not one—

> "Who in hot blood
> Hath stept into the law, that is past depth
> To those that, without heed, do plunge into it."
> TIMON OF ATHENS, *act* iii., *scene* 5.

[1] Mr. Hume, who made the order in favour of the mother of the infants, had been promoted to a higher office in the court, and Mr. Marshall had become his successor as chief clerk.

[2] Pages 5, 26, 27.

(§ 4). His own personal conduct, however, is a matter of very little moment. It is, indeed, insignificant in comparison with the important points arising in relation to the pure administration of justice, in cases like his, in our courts of equity. He admits that any man who has voluntarily embarked in litigation must be prepared to take the consequences of his temerity, and, generally speaking, if he fails, he will get very little sympathy from anybody when he begins to find fault with the tribunal of his own selection. But, on the other hand, let us take the case of some unfortunate individual who, like himself, did not embark in litigation of his own accord, but was simply drifted, or dragged, or precipitated, against his will, into "Judges' Chambers"—a tribunal of which, perhaps, he never heard before, and may never wish to hear again. Amongst other matters, may not such a person very properly ask whether the tribunal into which he has been plunged is a real court, in the popular sense of the phrase?—a court that is, in truth as well as in name, accessible to the public at large, or only a sort of *forum domesticum* that can scarcely ever become amenable to public scrutiny or criticism? Can the suitor always be able at "Judges' Chambers" to secure a fair, candid, patient, and enlightened hearing? Or is the machinery of "Judges' Chambers" of such a character that, instead of being quietly, carefully, and wisely investigated, according to established principles and fixed rules of evidence, a difficult case may possibly be dealt with, either in disregard of those principles and rules, or in scrambling confusion?

(§ 5). Again, may not an unwilling suitor justly and reasonably inquire whether the presiding officials at "Judges' Chambers" are eminent lawyers, endowed with practical wisdom, and profoundly versed in all the principles of equity, and the guiding laws of evidence? Have their previous pursuits in life fitted them to fulfil worthily judicial functions? Are they able to form a just and comprehensive estimate of all the peculiar circumstances with which cases of unusual doubt and perplexity are generally surrounded? Is it supposed that they possess sufficient grasp of thought and reasoning powers to determine the rights of an unprotected orphan ward like Eva Sanger, on the one hand, and the reciprocal duties and responsibilities towards her and themselves, of guardians, next friends, schoolmistresses, and medical attendants, on the other? And could they successfully grapple, upon broad general principles, with the serious questions I have set forth in the introduction to this little treatise?

(§ 6). In dealing with the emoluments of professional men, will "chief clerks" be able to distinguish the various grades

and distinctions which exist between the different members of various professions and vocations? If, for instance, the suitor be a man of science, claiming compensation for his scientific work, might it not be considered uncivil irony to suggest that "chief clerks," "junior clerks," or "assistant clerks" would be competent, without the assistance of an expert, to appreciate the value, or even understand the nature, of the services rendered? Or, if the suitor should happen to be a physician, would "chief clerks" understand the special responsibilities of medical men, the enormous amount of trouble and fatigue they undergo in cases of extreme danger, and the delicate and complicated relations which exist between them and their patients? Can it be expected that, without some external assistance, "chief clerks" could assess justly the money value of the judgment, the skill, and the experience of the physician? And is it seemly that they should try the experiment? Upon what principle would they proceed to fix the *quantum meruit* in such a case as Eva Sanger's? Would they estimate medical services of the highest class upon the lowest scale? or be governed by the mere time expended? or act upon some other system that might only be applicable to a tradesman's account, or the manual labour of the mechanic or the skilled artisan? Or, putting the matter in another light, would barristers-at-law or solicitors allow that members of the medical or any other profession but their own, are competent to regulate their fees or to tax their bills of costs?

(§ 7). Again, is it likely or proper that the arbitrary, unaided "determination" of any "chief clerk" upon matters so momentous, should command the respect of suitors or the confidence of the public? But what shall we think of a "chief clerk" who, idly and superciliously dismisses from consideration, as "a special case," a former decision of his own judge, upon a similar question, and when the suitor in both cases is the same individual?[1] And, moreover, what shall we think if such "chief clerk," well knowing that he has not a vestige of power to make "*any order which can be called his own order, in any sense,*"[2] and that "either party *has a right to the opinion of the judge, even on the minutest item of account,*"[3] should "put himself in the position which the masters formerly held,"[4] and force a reluctant claimant to listen to what he vainly calls his "opinion," or his "decision," or his "determination," when the only possible result will be to hamper that unlucky suitor in his subsequent

[1] See page 79.

[2] Judgment of Lord Hatherley. See the heading to this chapter.

[3] Judgments of V. C. Kindersley, cited afterwards, pp. 73, 77, 78.

[4] Judgment of Lord Justice Turner. See the heading to this chapter.

proceedings before the judge? Will the suitor ever feel satisfied that the course thus pursued, whether it be intended or not, has not seriously prejudiced the mind of that judge against him and his claim?

(§ 8). Yet this is not all. We must suppose, further, that in dealing with the account of a professional man, *consisting of many items*, the "chief clerk," after one whole year and nearly eight months besides, have been spent in inquiries,[1] proceeds, against the will of the claimant, to announce his "determination." Acting upon the *sic volo sic jubeo* principle, he awards a *fixed* sum to such claimant, wholly refusing, however, to say how he has arrived at that particular sum, or which of the items in the account he has allowed, or which he has disallowed, and thus leaving the bewildered suitor to guess, if he can, where he was right or where he was wrong. Naturally dissatisfied and perplexed with so strange and curious a proceeding, the suitor ventures to ask for the "reasons" of the chief clerk's "determination;" but that official immediately silences him with the reply: "*I shall not give my reasons unless my judge asks for them!*"

(§ 9). Let us pause here for a moment. One immediate effect of such a line of conduct would, of course, be to shut out all further evidence. For, without knowing the specific points to be proved, neither party would be able to obtain further testimony in his favour. But such exclusion of evidence has always been regarded as an odious act; and I think that every intelligent member of society, remembering the old maxim of the law, "*Lex plus laudatur quanto ratione probatur*," will stand aghast when he hears of such a proceeding. Will he not ask whether it is a burlesque upon justice or not? At any rate, what sort of equity must that be for which no reason is given? And then, consider the poor discomfited suitor! What can he think of it all? Smarting under the infliction, may he not be sorely tempted to make some very disagreeable remarks and inquiries? No amount of persuasion would ever convince his conscience that such a thing can be morally right. In his inmost soul he would repel the thought. "This tribunal or court, or whatever else it is called," he may say to himself and his friends, "has decided against me, and yet the chief clerk, as you term him, will give me no reasons for the decision. I earnestly tried to do my duty, but being only a poor suitor, I have no funds to retain learned counsel to bring my case into open court, and so am shut out from all means of ever knowing in what respect I have been wrong. But then, I suppose, such people as I am have no right or business to know why our wrongs are not redressed, or to put troublesome

questions to the chief clerks of Lord Romilly. Perhaps it is one of the special functions of a British court of equity to prove to us humble individuals the truth of those words which the poet sang many years ago:—

"Where ignorance is bliss,
'Tis folly to be wise."[1]

Yet some friend of that man may tell him that a good and learned equity judge[2] once said, that *"a person attending at chambers has only to suggest that he wishes to see the judge personally, and he can at once do so."* Comparing those words with the language of Lord Romilly's chief clerk, and his own helpless condition, the humble suitor could only say: "What delusive hopes! What jarring ideas!"

(§ 10). On the other hand, another suitor, possessing some pecuniary resources, may boldly determine to incur ruinous expenses, and perhaps expend his last shilling in employing counsel to carry his case to the higher tribunal, in order to learn, from the lips of the judge himself, the reason why his claim has been ignored in "Judges' Chambers," by a "chief clerk." But even then, alas! we shall presently see that all his efforts may be fruitless; and all his time and money hopelessly lost. Now, in the sacred name of Justice, is the system I have described to be regarded as an honour or a reproach to modern civilization? Let every good citizen, whether rich or poor, argue out that point fairly and freely in his own mind; and what must be the inevitable conclusion of his reasonings?

(§ 11). The subject I am now discussing is one that so vitally concerns the pure and impartial administration of justice in this country, that I shall venture to pursue it a little further. In the first place, it must be conceded that some tribunal similar to "Judges' Chambers" is needed to carry on that large and important portion of the Chancery business which consists of inquiries as to facts, investigations of accounts, and a variety of other matters which cannot conveniently be transacted before the judges when they sit publicly in their respective courts. It is necessary, in short, that some special department should be established in order "to inquire into and inform the conscience of the equity judge upon all matters of fact which are either disputed between the parties, or not so far ascertained by evidence, as to preclude all doubt on the subject."[3] The important question, however, is fairly open to grave inquiry, whether the system which was

[1] Gray's "Distant Prospect of Eton College."

[2] V. C. Wood, now Lord Chancellor Hatherley.

[3] "Penny Cyclopœdia," tit. *Chancery*.—An article written by an able lawyer.

pursued in the chambers of the Master of the Rolls in Eva Sanger's case is one that is well fitted for such purposes, and likely to facilitate or to obstruct the ends of justice? In attempting to solve that question, we may usefully take a rapid glance at the method of procedure which existed before "Chief Clerks," "Junior Clerks," or "Assistant Clerks" were called into activity by the Legislature.

(§ 12). Until the year 1852, all inquiries arising out of every Chancery suit were referred to some one of a certain number of learned functionaries called "MASTERS IN ORDINARY," each of whom, sitting separately in his own office or chambers, became, it was said, a sort of puisne judge, exercising an almost independent jurisdiction over the matters referred to him, and holding no communication with the judges who had directed the references, and to whom the ultimate decision of the causes would belong.

(§ 13). The course of procedure that prevailed in the masters' offices became excessively unpopular. At length it was so loudly and, I believe, justly complained of, on account of its tedious, dilatory, and costly character, that, in the year I have named, the office of "Master in Ordinary" was abolished by Parliament,[1] all the powers attached to it being transferred by the same Act of Parliament to the Master of the Rolls and the Vice-Chancellors respectively. Ever since that time the functions of the "Masters" have been performed in chambers, by those learned judges, or at any rate *in their names*, with the help of the large staff of clerks who have been divided into the different classes I have already named, of "Chief Clerks," "Junior Clerks," and "Assistant Clerks," together with other subordinate officials.

(§ 14). In all "sweeping reforms," as they are termed, it may happen that some really good parts of the doomed system may be ruthlessly swept away together with the bad. But none of us will believe that in abolishing the "Masters in Ordinary," on the ground that they had become *puisne* judges, the Legislature could have intended, under some other designation, to establish an equal number of petty despots in their place. Now, admitting that many grievous evils resulted from the system that was in vogue in the masters' offices previously to 1852, I must still respectfully doubt whether, in many cases, the old was not far superior to the new machinery, and the following are my reasons:—

(1). The Masters in Ordinary were all chosen *by the Crown*, from eminent members of the bar, and therefore perfectly independent of the judges. The Master of the Rolls for the time being was the chief of them. Many of those masters were men of high distinction,[1] who had acquired a profound

[1] 15 and 16 Vict., c. 80, s. 1.

knowledge of the principles as well as the practice of the courts of equity, in which they had been successful advocates. *But the present chief clerks are only solicitors of ten years' standing, and are the nominees of the several judges to whose courts they are attached. Indeed, a barrister-at-law is not eligible for the appointment, nor is it consistent with the etiquette of the Bar that he should attend before a chief clerk at Judges' Chambers.*

(2). After thoroughly sifting the evidence and hearing the arguments of all the parties, it was the special business of the "Master in Ordinary" to prepare a careful "report," in writing, of all the facts, together with his own decision or "finding," as it was called, upon them. *But in Dr. Clark's case*[2] *the Chief Clerk would neither state which items in his accounts he was prepared to allow, nor which he would disallow, nor how the sum he awarded was composed. Nor would he assign any reason whatever for the extraordinary conclusion at which he arrived.*

(3). Any party dissatisfied with the report of the "Master" might take "exceptions" to it, and then, through his counsel, he could bring the whole matter, by way of appeal, before the judge, with a perfect knowledge of all the facts, and of every item or question that required to be elucidated or supported by argument. *But Dr. Clark's learned counsel came into court*[3] *without the smallest knowledge of the specific items that were objected to or required elucidation, and in utter ignorance of the particular points which it might be needful for them to support by argument. In plain English, they were literally compelled—to use an expression of Lord Derby—to "take a leap in the dark."*

(§ 15). The vital importance to the suitors of the High Court of Chancery of the several matters I have touched upon will, I think, become very obvious to my readers, when taken in connexion with the proceedings in the chambers of the Master of the Rolls, in "Sanger *v.* Sanger," which I shall detail in the succeeding chapter.

[1] That able, painstaking, conscientious judge, Vice-Chancellor Kindersley, was one of the last of the Masters in Ordinary of the Court of Chancery.

[2] See page 83. [3] See pages 79, 80.

CHAPTER IX.

§§ 1, 2. Progress of Proceedings in Judges' Chambers. — §§ 3-5. Irregular correspondence admitted as evidence by the Chief Clerk—Technical quibbles —Offensive character of parts of correspondence. —§ 5. List of affidavits filed on both sides. §§ 6, 7. Offer of One Hundred Guineas declined. —§§ 8, 9. Chief Clerk's contracted notions—Right of the Suitor to be heard by Judge in Person. —§§ 10, 11. Strange proceedings and misjudgment of Chief Clerks—A fixed sum awarded—Refusal of Chief Clerk to distinguish items allowed from those disallowed — Or to state reasons. —§ 12. Reflections on the New Tribunal.

"I wish it was generally known and understood, that if a party before the chief clerk says: 'I desire to have this heard before the judge,' he always has the right to have it so heard. I was attended lately in chambers by counsel, and the counsel made use of the expression: 'An appeal from your Honour's chief clerk.' I took the liberty of stopping him immediately, and said: 'There is no such thing as an appeal from a chief clerk.'"—Vice-Chancellor Sir R. T. Kindersley.[1]

(§ 1). Dr. Clark's case was now fairly launched in "Judges' Chambers." On the day fixed by the summons, the 18th of July, 1867, his solicitor attended before the chief clerk, but nothing, of course, could then be done, as the "long vacation" —that respite from toil, labour, and anxiety which is naturally so dear to every hard-worked lawyer—was near at hand. The further consideration of his claim was, therefore, at once postponed until some day in the following month of November.

(§ 2). The general mode of conducting business at "Judge's Chambers" is by means of affidavits, of which several had then been filed on his behalf, but none on behalf of the guardians. Of these affidavits two or three were necessarily made by himself, in order to explain the nature of his claim; but there were some others of greater importance from medical men and others, from which I shall transcribe the most material passages, which will be found in the Appendix.

(§ 3). At one of the early meetings before the chief clerk in

[1] Wadham *v.* Rigg (4th March, 1862), "The Jurist," New Series vol. viii., p. 206; and Drewry and Smale's Reports, vol. ii., p. 80.

November, 1867, the solicitors of the guardians insisted that the whole of the correspondence that had passed in reference to the case of Eva Sanger should be submitted to the court, including various letters that had passed between Mr. Godwin and the guardians, and between Mr. Godwin, the guardians, and Mrs. Twigg, of which we had no previous knowledge. Many of the letters were, in fact, mere gossip, and legally inadmissible in evidence; but the solicitors of the next friend, and the guardians, threatened that if we refused to admit them they should object, on technical grounds, to the form of our summons. Indeed, on one occasion, Mr. Smith, the solicitor of the next friend, did apply to the chief clerk to dismiss the summons on the technical ground that Dr. Clark had no *locus standi* before the Court. And this vexatious, harassing course of conduct was pursued notwithstanding the previous promise of the guardians to facilitate the proceedings, and notwithstanding the fact that they had themselves acted under the summons, and repeatedly applied for adjournments. Under these circumstances the irregular correspondence was forced upon the Court.

(§ 4). I conceive that the conduct of the parties in trying to defeat Dr. Clark by legal quibbles was specially reprehensible, considering that he had previously signed the letter abandoning his right against them at law, upon the understanding that they would themselves bring the claim before the Judge in Chambers. The more important question however arises, Why was he thus compelled to admit that irregular correspondence? Was it not the duty of the chief clerk to protect the suitor, and sustain the process of the Court against all litigious threats and vexatious proceedings, and to forbid the reception of letters which he well knew were not legally admissible in evidence? And why did he enter them in his "notes?" But, however this may have been, on perusing the letters it was found that Dr. Clark was spoken of in the most disrespectful terms. It was insinuated that his charges were unusual and exorbitant; that his journeys to Worthing and Brighton, and his consultations with Sir William Jenner were unnecessary and unauthorised; that his professional visits to the little girl were unnecessarily frequent; that the acting guardian felt thankful that the advice of Sir William Jenner and himself to remove the child for a time into the country had not been adopted; that there was some prompter in the background; and still more offensively it was alleged that, in spite of the opinion so often expressed by Sir William Jenner and himself, the greater part of the time Dr. Clark attended Eva Sanger she was quite well, and needed no medical advice or assistance.

(§ 5). These statements were so unjust and so untrue, and so insulting to Sir William Jenner and Dr. Clark, that it was quite

impossible for the latter to remain silent. He felt that his professional character, and the honour of the profession to which he belongs, as well as the interests of the patients themselves, were all alike involved. To meet the unfounded accusations brought against him it became necessary to file various affidavits. The evidence was thus considerably increased in bulk, and the expense of preparing the case for the decision of the Master of the Rolls became unnecessarily heavy. Some idea of the costly and complicated character of these proceedings in Judges' Chambers may be formed from the affidavits and depositions filed on both sides, and read before the chief clerk, of which I subjoin a list, showing the dates when they were filed, and the names of the persons by whom they were sworn :—

AFFIDAVITS IN SUPPORT OF CLAIM.

1866. July 7. James Clark, M.D.
" " * John Rees James, M.R.C.S.L. and L.S.A.
" " * Sir William Fergusson, Bart.
" " * John Russell Reynolds, M.D.
1867. " 4.* John Foster Reeve, M.D.
" " 19. James Clark, M.D.
1868. March 4. James Clark, M.D.
" June 4. James Clark, M.D.
" July 8. Cross-examination of Dr. Clark on the foregoing affidavits.

DEPOSITIONS IN SUPPORT OF CLAIM.

1868. June 18. Mr. Alfred Godwin (Solicitor of the Guardians).
" " Mr. Serjeant Atkinson (Trustee).

AFFIDAVITS IN OPPOSITION TO CLAIM.

1868. July 7. Thomas Sanger (one of the Guardians).
" " Serjeant Atkinson.
" " Lilly Laurence Sanger (the elder ward).
" " Frederick Goodchild, M.D.
" " Charles Corbett Blades, M.D. (Police Surgeon).
" " James Turle, M.D. and L.S.A.
" " 27. Cross-examination of Thomas Sanger.

FURTHER AFFIDAVITS IN REPLY AND IN SUPPORT OF CLAIM.

1868. Nov. 26.* Sir William Jenner, Bart.
" " 28.* B. B. Orridge (Medical Agent).
" Dec. 12. W. H. Johnson, M.R.C.S.L.
" " * W. J. Collins, M.D.
1869. Jan. 9. C. A. Mornewick.
" " Miss Winstanley and Miss Savage (Schoolmistresses).
" " 11.* T. Browning Smith, M.D.
" " 12. James Clark, M.D.
" Feb. 17. James Clark, M.D.
" " 24. Mr. William King.

(§ 6). About eight months after the litigation had commenced,

* Extracts from these affidavits will be found in the Appendix.

namely, on the 21st of April, 1867, Dr. Clark's solicitors received a copy of the following letter :—

Sanger *v.* Sanger.

Dear Sirs,

We are quite willing on behalf of the plaintiffs to advise, subject, however, to the approbation of the chief clerk, and without prejudice, that *one hundred guineas* should be paid to Dr. Clark *in full for all the claims he makes against the plaintiffs;* and we shall feel obliged by your communicating this proposition to Messrs. Pattison and Wigg, as solicitors for Dr. Clark ; and also that it is intended to bring this offer to the notice of the chief clerk, so that in case of refusal it may be entered on his notes, or its acceptance approved.

We have based this offer of one hundred guineas upon the assumption of five shillings being a proper fee per visit, with an extra allowance for going to Brighton and Worthing ; and this, you will recollect, was the proposition made to the gentleman who represented Messrs. Pattison and Wigg before the chief clerk on the 23rd ulto.

We are, dear Sirs,

Yours truly,

15, Furnival's Inn, F. & T. SMITH & SONS.

21st April, 1868.

Messrs. Godwin & Pickett.

Now, at this time, at least seven long affidavits had been filed, and various appointments had been attended before the chief clerk, and the amount of the law costs which Dr. Clark had incurred, and his opponents refused to satisfy, would have been fifty pounds at the very least, so that, if he had accepted the offer, his remuneration for eleven months' attendance, including the fees he had paid to Sir William Jenner, would have been something less than fifty pounds.

(§ 7). Considering the offer to be wholly inadequate, he declined to accept it ; but at the same time, with the view of avoiding further expense, he renewed his proposal to refer the bills to arbitration, and stated that, if that suggestion should be again declined, the Master of the Rolls must decide the question between the guardians and himself.

(§ 8). Numerous appointments or meetings were afterwards held for the purpose of reading over the affidavits before Mr. Marshall, the chief clerk. It soon became evident, however, that he had formed a narrow and contracted idea of the claim. It is said that he even spoke of it as an ordinary case in which the sole subject of inquiry was the amount of the charges ; that it was, in fact, a very simple matter, that would ordinarily be dealt with by a common jury at Nisi Prius! The notion that really grave issues were involved in the conflict never seems to have once occurred to his thoughts. I have really no wish to say one disrespectful word against Mr. Marshall, or any of the chief clerks of the Court of Chancery. I dare say they may be quite competent to fulfil the routine duties which, under the old

system, the *chief clerks* of the "Masters in Ordinary" were in the habit of performing. But it would almost seem as if the aim of the new chief clerks is to assume the powers and functions of the masters themselves, instead of those of *their* chief clerks. At any rate, Dr. Clark most earnestly protests, on behalf of the profession to which he belongs, against the supposition that chief clerks can safely be left, without professional and scientific aid, to decide the grave and important questions which were involved in his claim as medical attendant of Eva Sanger. Nor can he admit that they are able to define the duties or to fix the emoluments of medical men; and, being of that opinion, he made up his mind that as soon as the evidence on both sides had been closed, his case should, if possible, be heard and decided by the judge in person.

(§ 9). Dr. Clark was advised that every suitor of the High Court of Chancery is entitled, not by way of courtesy only, but as a matter of plain, legal, and indefeasible right, to be *heard before the judge in person*, "even on the minutest item of account." Clearly, therefore, it is neither the right nor the duty, but, on the contrary, an unseemly and tyrannical act on the part of any chief clerk to endeavour to force his opinions, which are binding on no one but himself, upon the ears of unwilling suitors, who, feeling perhaps very little respect for anything he may think or may say respecting their claims, are only anxious to secure their privilege of "immediate access to the judge," which is expressly reserved to them by the law of the land. That it is so reserved is very manifest from the passages I have quoted at the heading of this and the preceding chapter; and, the subject being one that deeply concerns the administration of justice in our courts of equity, I shall subjoin some other decisions of learned judges to the like effect:—

VICE-CHANCELLOR SIR GEORGE TURNER.[1]

"I do not refer you to the clerk, but I postpone this part of the case to be examined by myself in chambers, with the assistance of the clerk."—Saunders v. Walter (Nov. 12, 1852), Hare's Reports, vol. ix., App. v.; and *Jurist*, New Series, vol. xvi., p. 1008.

VICE-CHANCELLOR SIR RICHARD TORIN KINDERSLEY.

"It could not be repeated too often, that if a question arose for determination before the chief clerk, either party had a right to the opinion of the judge, even on the minutest item of account."—In re *The London and County Assurance Company* (July 14, 1857). *Weekly Reporter*, vol. v., p. 794.

"I wish to disabuse the mind of the profession upon this point—that the chief clerk makes any decision from which there is any appeal. If he expresses his opinion, and any of the parties are dissatisfied with it, they

[1] Afterwards Lord Justice Turner.

have always a right to have the hearing adjourned into court; but it is no appeal—it is merely a continuation of the hearing begun before the chief clerk."—*Leeds* v. *Lewis* (Dec. 5, 1857), *Jurist*, New Series, vol. iii., p. 1290.

"The right, as I have often remarked, is not to have a matter adjourned into court, but to have it brought before the judge; although, if there is a question to be argued by counsel, it would, no doubt, be ordinarily adjourned into court as the more convenient course."—Re *Mitchell* (Nov. 6, 1863). *Jurist*, New Series, vol. ix., p. 1272; and *Weekly Reporter*, vol. xii., p. 40.

In the same case his honour again observed that "every suitor has the right to have the opinion of the judge—it was a matter of course." And he added that, "ordinarily, the proceedings in court were part of the proceedings in chambers."—*Ibid.*

LORD JUSTICE SIR GEORGE TURNER.

In the year 1861, a contest arose before one of the chief clerks of the present Master of the Rolls, with respect to the appointment of the official manager of a company called *The Agriculturist Cattle Insurance Company*. The chief clerk expressed his intention of appointing a Mr. Croysdill to that office. The dissatisfied parties, however, desired to have the matter brought on for hearing before the Master of the Rolls in person, and the chief clerk declined to accede to their request. Afterwards the Master of the Rolls himself, without having heard all the parties, declined to interfere with the appointment made by his chief clerk, and therefore the matter came, by way of appeal, before the Lords Justices, and Lord Justice Turner pronounced the following judgment:—

"If I may venture to say so without presumption, the public are very much indebted to the Master of the Rolls for the great proportion of the business of the court which he disposes of most ably and efficiently for their benefit; and they are much indebted also to the chief clerks for their very able services. *But in despatching the business of the court, regard must be had to the rights and interests of the suitors*, and I cannot agree that any suitor of the court has not the right, and the unqualified right, to have his case heard before the judge in person if he so desires. I think, therefore, that the chief clerk had no right to refuse the application which was made on the part of the appellant to have his case heard before the Master of the Rolls. * * * The right to be heard before the judge is by Act of Parliament (15 and 16 Vict., c. 80, ss. 29, 33), in terms reserved to the suitors. Nothing, I think, could be more detrimental to the interests of the suitors of the court, than that the chief clerks should be put in the position which the masters formerly held. * * * I repeat, that in my opinion, parties who desire to be heard before the judge are entitled to be so heard."—Re *The Agriculturist Cattle Insurance Company*, De Gex, Fisher, and Jones's Reports, vol. iii., p. 194.

VICE-CHANCELLOR SIR W. PAGE WOOD (now Lord Chancellor Hatherley).

"If any of the parties wish to go before the judge, it is the invariable practice, I believe, in all the chambers, to give them an opportunity of doing so directly. * * * A person attending at chambers has only to suggest that he wishes to see the judge personally, and he can at once do so."—*Hayward* v. *Hayward* (March 11, 1854), Kay's Reports, App. xxxiii.; and S.C. *nom.* Hayward *v.* Price, 2 Eq. Rep., 436.

"The chief clerk, as he had often taken occasion to observe, was never allowed to decide anything which he was not empowered to decide by the Act of orders. In every case any one had a right of immediate access to the judge to take his opinion. *The chief clerk did not fill the position of the master, but unquestionably had certain duties to perform, as to taking accounts, and making such inquiries as had usually been prosecuted before the chief clerks of the masters*, subject, nevertheless, to the right given to the suitor

to bring any particular point before the judge himself. * * * It was the province of the chief clerk to take accounts and make inquiries; and when the least objection was made by the suitor, then it was the duty of the judge to listen to such objection."—Dawkins *v.* Morton (Feb. 27, 1862) *Weekly Reporter*, vol. x., p. 393.

(§ 10). But to resume my narrative. The evidence had now been closed with the single exception that Dr. Clark wished to explain the circumstances connected with the case of "Clark *v.* Nichols," to which I shall refer more fully hereafter. It was decided by the present Master of the Rolls, in 1864, and Dr. Clark's object was to show that, so far as concerns the charges for his visits in London, the question of amount had already been determined by his lordship in his favour. The delay of a few days enabled him to make the requisite affidavit, and then his solicitor, on the morning of the 18th February last, attended before Mr. Marshall, the chief clerk, for the purpose of reading it in the usual course, and having it entered upon his "notes," so that it might come in due time before the judge.

(§ 11). On that occasion, however, something like the following dialogue occurred:—

Mr. GODWIN.—"I object to the affidavit being received; it would be going into an entirely new case. I am here representing the defendant Lilly Laurence Sanger,[1] and I am willing to submit, on her behalf, to an order for payment of £7 5s. as her share of Dr. Clark's claim."

CHIEF CLERK (*in a tone of apparent regret*).—"You know that I have no power to exclude evidence; I am bound to hear and enter the affidavit."

Dr. Clark's solicitor then proceeded to read over the affidavit, which was entered on the "notes." But it evidently had not the smallest effect on the mind of Mr. Marshall, as the ensuing dialogue will show:—

CHIEF CLERK.—"Oh! I suppose it must have been some special case. The affidavit will have no weight with me. I have made up my mind as to the figures, and——"

SOLICITOR.—"It is the wish of Dr. Clark that his claim should be heard by the judge in person."

CHIEF CLERK.—"You should have asked me for that before!"

SOLICITOR.—"He claims the right to go before the judge at any time. I must refer you to the decisions of Vice Chancellor Kindersley and Lord Justice Turner in the cases of——"

CHIEF CLERK (*interrupting*).—"Yes. I would much rather

[1] After the elder ward came of age in 1868, her name was struck out of the proceedings as plaintiff, and she was made a defendant; Mr. Godwin openly appearing as solicitor for her as well as for her trustees and her late guardians.

not have to decide this matter. But my judge orders me to give my *decision* in every case; and I must obey my own judge. Dr. Clark is entitled to £82 13s. and costs up to the 27th of April, 1867, the day the offer of £105 was made."

SOLICITOR.—"Will you give us the particulars, showing how you arrive at the £82 13s.?"

CHIEF CLERK.—"No. I shall give them to the judge, if he should ask for them!"

SOLICITOR.—"Will you state your reasons for the determination you have expressed?"

CHIEF CLERK.—"No. I shall be prepared to state my reasons to the judge, if required!"

(§ 12). That is the mode in which I was treated by a chief clerk in the chambers of the Master of the Rolls! If the claims of the suitors in Chancery are now dealt with in such a fashion by this new tribunal, fresh from the hands of our "law reformers," and in the hey-day of youth, what may we not expect when the newly-originated tactics have settled into a rigid, unbending system, and the tribunal itself has arrived, by successive stages, at maturity, senility, and decrepitude? "For, if they do these things in a green tree, what shall be done in the dry?"

CHAPTER X.

§§ 1-5. Increase of difficulties through Chief Clerk's Determination—Legal cobwebs—Lord Dundreary's Puzzle in Chancery—Inability to instruct Counsel — Perilous position of a Suitor.—§§ 6-9. Why should Suitors be kept in ignorance or bamboozled? — Evil results of the new system.— §§ 10-13. The case opened by Mr. Jessel, Q.C.— Lord Romilly condescendingly explains his Clerk's mysterious figures—The Case adjourned until Monday.—§§ 13-15. Disgraceful publication during adjournment of Libellous Newspaper Reports.— § 15. Subsequent correspondence thereon with Mr. John Chester.—§§ 13-15. Mr. Colt resumes the Argument.—§ 16. Colloquy between Lord Romilly and Sir Richard Baggally. — § 16. Shorthand Writers' Report of Lord Romilly's Judgment.— §§ 17, 18. The material questions remain unsolved —Oh! for one hour of Lord Eldon!—§§ 18, 19. Fearful amount of useless law costs—Extracts from a Comic Journal.—§§ 20, 21. Newspaper Reports.—§ 22. Appropriate reflections.

"How will this grieve you,
When you shall come to clearer knowledge, that
You thus have published me? Gentle my lord,
You scarce can right me throughly then, to say
You did mistake."

Winter's Tale, *act* i., *scene* 1.

"De fide et officio judicis non recipitur quæstio, sed de scientia sive sit error juris sive facti.

"Optima est lex quæ minimum relinquit arbitrio judicis, optimus judex qui minimum sibi."—*Maxims of Law.*

"Who so upon himselfe will take the skill,
True justice unto people to divide,
Hath need of mighty hands for to fulfil
That which he doth with righteous doome decide,
And for to maister wrong and puissant pride."

Spenser's Faerie Queen, b. 5, c. 4.

"Dr. Clark's claim * * * has at any rate raised some questions of public importance."—"Altera Pars," in the *Daily News*, 20th March, 1869.

(§ 1). If the contest Dr. Clark has waged with the guardians had been one of money only, and not of principle, he might have been

willing at that moment to submit to the extraordinary "opinion," "determination," or "decision," or whatever else it is called, of Lord Romilly's clerk, rather than prolong the litigation, which had now lasted a whole year and eight months beyond, and had, moreover, become irksome and disagreeable to the highest extent. Nor could he entertain much hope of success. He grieved to think that in all probability the Master of the Rolls would, almost as a matter of course, adopt and endorse the acts of his clerk, without attempting to grapple with the main questions at issue. And so it really happened! He thought, moreover, of the obloquy, and the ridicule, and the ruinous costs to which unsuccessful litigants are exposed:—

"With subtle cobweb-cheats,
They're catch'd in knotted law like nets;
In which, when once they are imbrangled,
The more they stir, the more they're tangled;
And while their purses can dispute,
There's no end of the immortal suit."
HUDIBRAS, part ii., canto 3, l. 17-22.

On the other hand, he was of opinion that the case of this little girl ought to have been dealt with as one of great public interest and importance. It was really one that required very critical and delicate handling. It involved many points of social consequence, and, to a large extent, of public policy also. And, most assuredly, it opened up numerous and momentous questions touching the rights and the interests of every ward in Chancery, and the duties and responsibilities of every guardian and every medical practitioner in the kingdom. Dr. Clark felt that he ought not to shrink from the contest, whatever might be the result.

(§ 2). It appeared that two courses of proceeding were left open to us. We might either have the matter discussed again by the solicitors on both sides, before the judge sitting in chambers, in which event we should not have been allowed the assistance of learned counsel in arguing the serious points involved—nor I suppose would any publicity have been given to the matter by means of the Press; or we might retain counsel[1] to argue the claim before the Master of the Rolls, sitting in public court. "If the parties choose," said a celebrated Lord Chancellor,"[2] to have matters of much delicacy, but of mighty importance, discussed and argued in public, I know that it is one of the best

[1] It is said that great diversity prevails as to the practice. If one side only desires to be heard by counsel, the judge hears the argument in chambers; if both desire to be so represented, the matter is adjourned to be heard in court.—Rumbold *v.* Forteath, 3 Kay and John., 44. But in V.C. Stuart's chambers counsel will not be heard at all.—*Seton*, p. 55.

[2] Lord Eldon in Wellesley *v.* Beaufort, Russell's Reports, vol. i., p. 18.

securities for the honest exercise of a judge's duty that he is to discharge that duty in public." Agreeing in that opinion, we determined that all the questions at issue between Dr. Clark and the guardians of Eva Sanger should be prominently brought under discussion in public. Accordingly, two able counsel were retained on his behalf,—Mr. Jessel, Q.C.,[1] and Mr. F. Hoare Colt.

(§ 3). A difficulty, however, presented itself which seemed to be quite insurmountable. What instructions could we give to counsel, and upon what specific questions were we to go before his lordship the Master of the Rolls for his opinion? The chief clerk, having awarded to us a fixed sum, and refused to explain the grounds of his so-called "determination," or to point out which of the items in the accounts he allowed, or which he disallowed, Dr. Clark's legal advisers were of course left in the dark and completely puzzled. We had, in point of fact, to fight a battle in a British court of equity blindfold. For my own part, I shrank from the attempt to discover how Mr. Marshall came to find out that £82 and thirteen odd shillings would be a proper recompense for Dr. Clark's services to Eva Sanger and her elder sister. I gave it up in despair; it was a mystery far beyond my humble comprehension.

(§ 4). Thus the sagacity and learning of his solicitors and counsel were, on this occasion, completely at fault. After trying in vain to solve the small arithmetical problem, they, one and all, agreed, like Lord Dundreary, that "it was a sort of thing that no fella' could make out." They asked many questions, but none of them could be answered. "Did the chief clerk allow all the 123 professional visits in London, or only some of them? and what amount of fees did he sanction? What did he say respecting the journeys to Worthing and to Brighton, and what mileage rate did he fix? Did he adopt or recognise any portion of the "extra charges?" or make any special allowance for Dr. Clark's trouble in accompanying the mother when she visited her sick child under the order of Lord Romilly? Did he profess to act upon any definite rule or principle when dealing with the accounts? or was he guided solely by his own individual notions as to how the fees of a physician should be regulated in such a case as Eva Sanger's? And then that odd sum of thirteen shillings gave no end of trouble to us all! every one being perfectly willing at any moment to abandon or make a present of the amount to the chief clerk, or any other person who could only find out for us how that "lump sum of £82" was made up! But all our conjectures only left us more perplexed and bewildered than ever.

[1] M.P. for Dover.

(§ 5). Then, again, the "minutes" or "notes," as they are termed, of the sayings and doings of the chief clerk during the year and eight months that the claim had been dangling before him at Judge's Chambers, were not accessible to us. Nor could we ascertain what "questions or points" had been entered as "decided or ruled;"[1] nor what views had been propounded at the different meetings; nor what communications, if any, had been made by the clerk to the noble and learned judge, either in favour of, or against Dr. Clark's conduct, his character, or his claim. Under such circumstances it became painfully obvious to us all, that any step we might be induced to take to clear up the mystery by bringing his accounts before Lord Romilly in person, would necessarily be a very hazardous, if not desperate, experiment. And so, alas! it undoubtedly proved!

(§ 6). But why should the suitors of the "reformed" Court of Chancery be kept in ruinous suspense or placed in such an unpleasant predicament as Dr. Clark was? I have already shown that, under the practice formerly pursued by the "Masters in Ordinary," it was quite impossible that any suitor could be so taken by surprise, or be kept in ignorance of the facts or of the specific matters upon which he desired to obtain the decision of the judge.[2] But, taking our case as an example, how does it fare with the unlucky suitor under the newly-established system of "Chief Clerks?" According to the terms of the Act of Parliament, and the various decisions of learned judges I have cited, there is no doubt that in theory he has the unqualified right of "immediate access to the judge," "even on the minutest item of account." Why, then, is that right to be crippled or neutralized by the arbitrary conduct of chief clerks? Of what use is it to the suitor to go before the judge in person, unless he is previously aware of all the facts and all the matters to be discussed, argued, and decided?

(§ 7). If, moreover, the chief clerk is allowed to take the place of a "Master in Ordinary," and to pronounce what in courtesy only can be called a "decision," without assigning reasons for what he decides, will not such an act tend to outrage the feelings of the suitor, and, perhaps, nullify his rights? Would not the new machinery be far worse than the old in his estimation? Would it not clog the freedom of action of the suitor, and place him in

[1] "A register is ordered to be kept of all proceedings in Judge's Chambers, with proper dates, so that all the proceedings in each cause or matter may appear consecutively, and in chronological order, with a short statement of the questions or points decided or ruled at every hearing."—Order xxxv., 57, Daniel's Chancery Practice, by Field, Dunn and Biddle, 14th ed., 1867, vol. ii., p. 1070.

[2] Pages 71, 72.

a position of great doubt, uncertainty and peril? How could he proceed with any confidence in obtaining the opinion of a judge upon any specific points, when he is not even allowed to know what portions of the relief he is seeking have been either granted or refused by the chief clerk? How can he hope to obtain any satisfactory investigation when his own counsel, through his inability to give them instructions, come into court in utter ignorance of the special matters they are to elucidate or argue on his behalf? And how can he feel sure that the "decision" of the chief clerk has not prejudiced the mind of the judge? Or at any rate that justice will be done, when all the points involved in the case, and all the details, whether they be in his favour or against him, have been indiscriminately entangled or muddled together by the chief clerk, into one great and inextricable labyrinth of confusion, so that what has been allowed cannot be distinguished from what has been disallowed, or what is certain cannot be separated from what is doubtful, or that which is proved or admitted has been hopelessly confused with that which has not even been considered or is still in dispute?

(§ 8). How, again, under such circumstances, could any distinct issue, either of law or of fact, be raised with safety or with certainty for the consideration of the judge? Would not every suitor be justly inspired with a feeling of dread, or even of horror, if he should find that he cannot exercise his undoubted statutory right of having his claim openly discussed and argued before the judge in person, without being trammelled by some preliminary "opinion," "determination," or "decision," of no legal value whatever, of some chief clerk, who cannot, or will not, give reasons for what he says, and who is, moreover, in the judgment of the suitor, quite incompetent to handle the grave and difficult questions upon which he desires to obtain the deliberate and enlightened judgment of the High Court of Chancery? And is it consistent with the dictates of sound reason or pure equity that any suitor, when coming before a judge, should thus be forced, as I have already observed, "*to take a leap in the dark?*"

(§ 9). One word more. Does the vicious system of keeping suitors in a state of utter ignorance and uncertainty until they are actually in court, prevail generally in the chambers of the equity judges, or only in those of the Master of the Rolls? Is it the intention of Lord Romilly, notwithstanding the terms of the Act of Parliament and the conclusive judgments already quoted, to elevate his own chief clerks to the position which the "Masters in Ordinary" formerly occupied? How would that course of procedure affect the rights and the interests of the poor suitor, who cannot instruct counsel to appear in court and learn the reason why the relief he sought in chambers was refused?

Would it not be, to *him* at least, a total denial of justice? And, then, as regards all other suitors—would it not force upon them, in lieu of the simple right of seeing the judge "directly" upon any point, however trivial, the costly, troublesome, and hazardous expedient of coming into a public court, as Dr. Clark did, in total ignorance of the specific questions to be submitted to the judge for adjudication? And, lastly, let me ask whether the suitors will not think that such proceedings, by whomsoever conducted and by whatever name they may be called, are fraught with evil consequences to their happiness, their reputation, and their property?

(§ 10). It was not until Saturday the 13th of March, 1869, that the now well-known case of "SANGER *v.* SANGER, *ex parte* DR. CLARK," was called on for argument before his lordship the Master of the Rolls. Mr. Jessel, Q.C., and Mr. F. Hoare Colt appeared in support of the claim; Sir Richard Baggally and Mr. John Chester appeared on behalf of the guardians; and Mr. Southgate, Q.C., and Mr. W. W. Cooper for the infant plaintiff, Eva Sanger. With much regret I have to remark that, from beginning to end, the case has been dealt with upon very narrow and contracted principles. At an early stage of the discussion the great mystery of the figures was for the first time divulged. Lord Romilly condescendingly undertook, by the aid of some paper that was before him, to be the spokesman of his clerk; and our counsel were told that, in computing the incomprehensible sum of £82 13s. 0d., that functionary had allowed 7s. 6d. for *every* visit, ten guineas for each visit to Worthing, and the six guineas paid to Sir William Jenner for the consultations; and had disallowed the visits to Brighton, and the final item of forty guineas altogether.[1]

(§ 11). Some of the doubts respecting the propriety of Dr. Clark's professional conduct have arisen chiefly from the very unsatisfactory mode in which his claim was presented to the court and the public. Not a single syllable was spoken in reference to the urgent endeavours he had made to avert litigation by referring his account to the decision of friendly medical arbitrators; nor to the very peculiar circumstances under which he had acted as the medical attendant of the child, or to the extraordinary conduct of her acting guardian and her non-acting guardian and her schoolmistress, that rendered it necessary, in his judgment, to bring the subject judicially before the Master of the Rolls. In fact, his case was erroneously or incautiously compared to the trial of a common action of *assumpsit* at Nisi Prius! Now, to medical men, the very name of such a thing is hateful! They can all understand that occasionally grave cases arise, in which no

[1] *The Times*, March 16th, 1869

money payment can adequately remunerate them for their services. On such occasions, to talk to them of Nisi Prius would only remind them of the memorable words of the late Sir James Graham: 'Thank God!" exclaimed that distinguished statesman, when arguing a question of imperial policy, which had been dealt with on the narrow principles of special pleading,—"thank God! we are not at Nisi Prius."

(§ 12). By means of such legal technicalities, and by withdrawing the leading features of the case from the notice of the court, Dr. Clark's claim was degraded into a mere struggle for money. So it happened very unfortunately that his wish to obtain a judicial solution of various grave and difficult points has been completely frustrated. He has, therefore, the mortification of finding that the learned equity judge, adopting the narrow train of ideas suggested with respect to actions of *assumpsit* and trials at Nisi Prius, evaded the vital issues he wished to have raised, and disposed of the account as if it were a paltry squabble about the amount of a doctor's ordinary bill of charges for attending some ordinary patient for a trivial malady under ordinary circumstances.

(§ 13). But to proceed with the narrative. On Monday morning, the 15th of March, the arguments were resumed by the junior counsel, Mr. F. Hoare Colt. On entering the court, it was observed that he held in his hand a copy of one of the morning newspapers.[1] It contained what purported to be a report of the proceedings of the previous Saturday, displaying the spirit of partisanship in its grossest form. It started with the erroneous statement that "*the case came on upon an appeal from the decision of the chief clerk;*" whereas the compiler must have known, that in reality there is no such thing as an appeal from the decision of a chief clerk. Many material facts that did transpire in open court were omitted, and some that were perfectly irrelevant were introduced, although never mentioned in the presence of Lord Romilly. There were inaccurate statements, for example, relating to Dr. Clark's former professional practice in Penton Street, and other matters which could have no legitimate bearing upon the merits of his claim; and it seemed as if they were only introduced on the principle of "drawing a red herring across the scent," in order to screen the conduct of the acting guardian from public scrutiny and censure. It thus became pretty clear that the compiler must have been one of the counsel retained on behalf of the guardians or of the infant plaintiff, or, at any rate, some person having access to the briefs of the opposing counsel.

(§ 14). The report afterwards went on to give a malicious

[1] *Standard*, March 15th, 1869. The same report appeared in the *Morning Herald* of the same day.

and garbled account of several matters, including some expressions which are said to have fallen from the lips of Lord Romilly, and which were so manipulated as to make it appear that they applied specially and personally to Dr. Clark, instead of being a general remark applicable to all claims in connexion with orphan wards of court. The exact words, as reported in the *Standard*, were :—

"HIS LORDSHIP OBSERVED, THAT IF CLAIMS OF THIS SORT WERE ENCOURAGED THE COURT OF CHANCERY WOULD LAY ITSELF OPEN TO THE ACCUSATION (FREQUENTLY BROUGHT AGAINST IT) OF BEING THE DEVOURER OF THE ESTATES OF ORPHANS."

On the other hand, it may be thought that I am mistaken, and that Lord Romilly did, indeed, stigmatize Dr. Clark publicly as a "devourer of orphans' estates!" I cannot believe it. Is it possible, I ask, that an equity judge, sitting in public court, would use such expressions, without adequate reasons, towards the most humble suitor? and especially at a time when the leading counsel of that suitor had only just begun to open his case, and scarcely any of the evidence had been heard? Again, is it possible that a judge so able and so learned would allow the "notes" or the "determination" of his chief clerk to prejudice his mind beforehand, or be guided by anything but sworn testimony when dealing with Dr. Clark or his claim? I cannot—I will not—give credence to such ideas. Dr. Clark's whole life would prove that the accusation is nothing less than a gross and scandalous libel.[1] Much of his time has always been spent in giving gratuitous

[1] Many years ago, in order to assist a professional friend, who is still living, Dr. Clark undertook, *without fee or reward*, the medical charge of two districts in a Poor Law Union, in which illness of a most serious character prevailed to an unusual extent among the poor Dorsetshire labourers. In return for his services he received nothing but some testimonials, from which I select the following:—

April, 1840.

"We, the undersigned, desire to bear testimony to the satisfaction and confidence which we have had during the period of Dr. Clark's attendance upon the Puddletown districts of the DORCHESTER UNION. Within that space of time illness of a serious character has prevailed to an unusual extent, and we have reason to be fully satisfied with the kind and skilful treatment which he has adopted. As the office of PHYSICIAN to the DORSET COUNTY HOSPITAL is now vacant, we can only express our persuasion that a gentleman of so much experience would form a great acquisition to so valuable an institution.

"(*Signed*) GEORGE COKE, Rector of Puddletown;
THOMAS WARREN, Vicar of Tolpuddle;
GEORGE HADLEY, Vicar of Milborne St. Andrew, and Dewlish;
J. W. KNIPE, Curate of Woodsford and Tincleton;
[And by 37 Churchwardens, Overseers, Guardians and principal inhabitants of the districts.]"

advice and help to the sick and suffering poor; and some of the kind and eminent medical friends who have borne testimony in his favour will readily believe the statement he made in one of his affidavits, that, "if the little girl Eva Sanger had been a poor, friendless child placed under a schoolmistress, and maintained only by charity or the subscriptions of friends almost as poor as herself, he would have been quite willing, rather than leave her without medical aid, to attend her with equal zeal and assiduity, without looking for any pecuniary reward whatever." If, therefore, the Master of the Rolls described him as a "devourer of orphans' estates," he would respectfully say, in the language, already quoted, of our greatest dramatic poet:—

> "How will this grieve you,
> When you shall come to clearer knowledge, that
> You have thus publish'd me? Gentle, my lord,
> You scarce can right me throughly."

(§ 15). But, however this may be, I wish my readers to observe that the false and defamatory report of which he complains made its appearance at the very moment when Dr. Clark's claim in Sanger *v.* Sanger had emerged from the *forum domesticum* of the chief clerk, and was actually before the noble judge himself in open court; at the very moment when vital questions touching the rights of wards in Chancery and the relative duties and responsibilities of their guardians and medical attendants were all alike involved in the pending issue; when it was more than usually needful that justice should be no respecter of persons; when any strongly-expressed opinions on either side appearing in the public prints might meet the eye and perhaps poison the mind of the presiding judge; and when the scales of justice, if not held by the most steady hand, might "kick the beam" in obedience to mere popular impulse. I have already observed [1] that the publication of that report defaming the Doctor's character whilst the proceedings were pending (*pendente lite*) was a high contempt of the authority of the Court, which some equity judges would have punished by ordering the publisher, and the writer also, if he could have been discovered, to stand committed to prison. Most certainly the punishment would not have been too severe, for, if the character of the humble suitor may be publicly assailed before his cause is heard, how can he expect to

> "Poise the cause in Justice's equal scales,
> Whose beam stands sure, whose rightful cause prevails."
> HENRY VI., *act* ii., *scene* 1.

There is, moreover, another very ugly feature in the matter. It was, no doubt, believed by many that the report was the genuine,

[1] Page 3.

independent, spontaneous expression of "public opinion" as represented by the journals in which it appeared. But I have already stated[1] that there is good reason to believe that the compiler was Mr. John Chester,[2] the stepson and paid advocate

[1] Page 3.

[2] Mr. Chester, I was informed, was the law reporter at the Rolls Court of the *Morning Herald* and the *Standard*. The editor of the latter newspaper courteously published (March 26, 1869) a letter from Dr. Clark correcting some of the most glaring mistakes. But as he declined to say whether Mr. Chester was the compiler of the reports or not, a correspondence has since taken place between that gentleman and PAUL STORR, Esq., which I transcribe for the information of my readers:—

127, Queen's Crescent, Haverstock Hill,
Sir,— June 25th, 1869.

I am requested by my friend Dr. Clark to forward you a proof-sheet of the first chapter of his forthcoming pamphlet, entitled "Orphan Wards of Chancery: their Guardians and Doctors." I beg to call your special attention to the observations contained in it relating to yourself individually.

Of course Dr. Clark will be quite willing to cancel those observations on receiving from you a written assurance that you were not the compiler, nor in any way responsible for the publication of the reports of "Sanger *v.* Sanger" which appeared in the *Morning Herald* and the *Standard* of March the 15th; and further, that you were not the author of the anonymous letters signed "Altera Pars," which appeared about the same time in the *Daily News*.

But should you fail to disavow your personal responsibility for those reports and letters, Dr. Clark will feel himself at liberty to publish his pamphlet with the statements respecting yourself uncancelled. The bearer is instructed by me to wait for an answer, and to bring him back the proof-sheet.

I am, Sir, your obedient servant,
PAUL STORR.

5, Old Square, Lincoln's Inn, W.C.
Sir,— June 26th, 1869.

I beg to acknowledge the receipt of your letter dated June 25th, 1869, and a printed slip which I return herewith.

Whatever statements Dr. Clark makes in his forthcoming pamphlet will be made on his own responsibility, and at his own risk.

I am, Sir,
Your obedient servant,
— Storr, Esq. JOHN CHESTER.

127, Queen's Crescent, Haverstock Hill,
Sir,— August 4th, 1869.

I duly received your note of the 26th of June, and Dr. Clark has requested me to address you once again. It has been openly stated, as I have been informed, that you were the law reporter of cases in the Rolls Court for the *Standard* and the *Morning Herald* newspapers, and I think of the *Daily News* also. You were likewise one of the counsel retained by the guardians in opposition to Dr. Clark's claim in Sanger *v.* Sanger. Now I must invite your attention to the three following points:—

of the acting guardian! One word more. Is it consistent with equity or "good conscience," that any man should be denounced or lampooned in the public prints when his claim is in the presence-chamber of a judge, and his counsel and the evidence in his favour are alike unheard? Being liable to such attacks, without the means of obtaining redress, will any physician waste his time and his energies, and risk his reputation in another equally hazardous enterprise? Might it not prove, in the case of a young practitioner, the first step to professional ruin? Will he expose himself again to such an indignity? Will he be weak enough to allow some other equity judge or "law reporter"—if any could be found to undertake the ignoble work—to brand him publicly as a sort of moral scarecrow, a "medical cormorant," a "devourer of orphans' estates," simply and solely because, under

(1). The reports in the *Morning Herald* and the *Standard* appeared before the case was fully heard, and contained statements that could only be known to counsel, or to some one who had access to the briefs of counsel.

(2). The publication of such reports, *pendente lite*, was calculated to influence prejudicially the mind of the judge of the court and the public, against Dr. Clark's claim.

(3). Being so published, *pendente lite*, it is said that they constituted a contempt of the authority of the Court.

The manager and the editor of the *Standard*, whilst refusing to give any information, do not, I am given to understand, deny that you were the compiler of the report. Dr. Clark has no wish to introduce your name unnecessarily into his pamphlet, and I therefore once more address you in the hope that it will be in your power to remove all further difficulty by disclaiming and repudiating the objectionable reports and the anonymous letters inserted in the *Daily News* about the same date.

If, however, you are unable or unwilling to do so, you will place it out of the power of Dr. Clark to relieve you from the suspicions that have been aroused, and which your silence will confirm; and you must not be surprised if, in a matter so closely and deeply touching the honour of the Bar, he should deem it right to bring the whole subject before the Benchers of the Inn of Court to which you belong. Begging the favour of your reply,

I remain, Sir,

Your obedient servant,

John Chester, Esq. PAUL STORR.

This letter was delivered by a special messenger, and the verbal reply of Mr. Chester was, that he had "no answer to give; he had answered already."

I must explain that, afterwards, Dr. Clark abandoned the intention of publishing a pamphlet in relation to the case of Eva Sanger. Although entertaining no dread of what might be said or done against him by Mr. Chester or his clients, Dr. Clark was anxious not to prejudice his own right of appeal. In his opinion, moreover, the various medico-legal questions scarcely seemed to lie within the province of a physician, and the investigation would have involved him in an expenditure of time which he could ill afford to spare from other duties. Under these circumstances I voluntarily undertook the task of vindicating my late client's conduct and character; and I am solely responsible for all the arguments and opinions advanced in this little volume.

the most trying circumstances, he seeks remuneration, when he succeeds in rescuing some unprotected child from the jaws of death? Or would he not rather be compelled to stifle the feelings of humanity, and abandon the unhappy child to her fate?

(§ 16). But let me return to my narrative. As soon as the junior counsel, Mr. Colt, had concluded his argument, the following colloquy ensued between his lordship the Master of the Rolls and Sir Richard Baggally, the leading counsel of our guardians:—

LORD ROMILLY.—"Sir Richard Baggally, will you adhere to your proposal of giving (?) him a hundred guineas?"

SIR R. BAGGALLY.—"Yes, my lord; certainly, if your lordship thinks it right."

Whereupon the Master of the Rolls, without calling for any argument on the other side, immediately proceeded to pronounce his JUDGMENT, which, according to the notes of the shorthand writer, was couched in the following terms:—

LORD ROMILLY'S JUDGMENT.

"Then I think that is more than he is entitled to. I will dismiss the summons, with costs from the time when the offer was made to give (?) him a hundred guineas. And as it is very likely this will go further,[1] I think it proper to state, after full consideration of the evidence, that I should have disallowed all the visits both to Brighton and to Worthing,[2] and I should have disallowed the whole of the forty guineas,[3] the general lump sum at the end.

"I should also have reduced the ordinary attendances[4] from time to time, though I might have given (?) him something for the special arrangement by which it was required that the mother should be allowed to see the child.

"I should have very seriously reduced the amount of the items,[5] but as you have, I think very properly, according to your instructions, given (?) him 100 guineas, I shall allow you the costs from the time when that offer was refused. He must have his costs up to that time, and 100 guineas, and then you must set off the one against the other.

"I must say that, if I adopted the view and the argument which Mr. Colt has been urging upon me this morning, the result would be[6] that in all these cases of wards of court, where they are orphans, of which I have so many, it would depend on the physician exactly how much of the infant's estate he should think fit to take. He might attend as much or as little as he pleased, and charge very much what he pleased. I cannot accede to that view of the case. It would make it necessary, which would be exceedingly disagreeable to me, in such cases[7] to make a special arrangement with every physician before any child could be allowed to have a medical attendant."

That is the whole of the judgment! Not one word of satisfaction that the life of the child had been preserved! Not one word of sympathy for her medical attendant, who had so zealously

[1] That is to say, by way of appeal to a higher branch of the Court of Chancery than that over which his lordship presides.

[2] See pp. 114-120.
[3] See pp. 121-127.
[4] See pp. 103-111.
[5] Ibid.
[6] See pp. 128-132.
[7] Ibid.

devoted his time and his energies to her in the hour of her peril! not the smallest allowance for the difficulties of his position! and not one word of censure upon those who molested him when he was earnestly struggling to do his duty towards his young patient, whose person and property, as a ward of court, were under the special protection of his lordship!

(§ 17). The important questions raised but not solved by this judgment, I shall discuss *seriatim* hereafter. In the meantime, I wish to point out the noteworthy fact, that the heavy expense of retaining Sir Richard Baggally and Mr. John Chester (the stepson), to protect the rights and interests of the guardians and of the young ward of court, was evidently not enough to satisfy the craving desires of the opposing solicitors. Accordingly, the two other counsel I have named, for no other conceivable purpose than to swell the costs, were supplied with "briefs" and instructed to appear specially on behalf of the infant Eva Sanger. And although none of them took any part in the discussion, Dr. Clark would have been victimized to the extent of two separate sets of costs, payable to two different firms of lawyers besides his own, if his distinguished counsel, Mr. Jessel, had not successfully interposed on his behalf, as is shown by the following extracts from the notes of the shorthand writer:—

Mr. JESSEL.—"I am sure your lordship will allow me to say this: Your lordship makes the Doctor pay the costs since the offer was refused; but I ask your lordship not to make us pay two sets of costs. The infant has appeared."

LORD ROMILLY.—"Only one set of costs. I shall only make him pay one set of costs. One opposition was quite sufficient. You are quite right in that, Mr. Jessel."

(§ 18). Let us pause here for a moment. "Plain truth needs no flowers of speech." I say, therefore, that I am within the bounds of truth when I state that the sum wasted in fees to counsel alone must have amounted to at least one half of Dr. Clark's claim. Moreover, I believe that when the law costs on both sides can be ascertained, it will be found that the sum to be paid to lawyers,[1] partly by him and partly out of the estate of the young

[1] This view of the subject attracted the notice of one of our comic journalists, as the following extracts will show:—

"LAW APPRAISING MEDICINE.—Attention, judges, gentlemen of the long robe, and British public at large, to the utterance of the Master of the Rolls, reported to have been delivered in Sanger *v.* Sanger, *ex parte* Dr. Clark. . . . It may be that Dr. Clark, in the amount which he claimed, did not at all under-estimate the value of medical attendance. But did the Master of the Rolls not somewhat depreciate that commodity in appraising so much of it as Dr. Clark had supplied those young ladies at less than a hundred guineas? Did not the learned judge undervalue it, if not absolutely yet relatively? Lord Romilly has ascended to the eminence which he adorns from the bar. Does he account the remuneration asked by Dr. Clark for medical service however exorbitant, simply considered, to be at all unreasonable in comparison to that to which a corresponding quantity of forensic work is com-

ward of court, will largely exceed the amount of Dr. Clark's charges for attending her during eleven months, with unwearied assiduity and unexpected success! But what grieves me more is, that I was disappointed in the hope I had indulged that the Master of the Rolls would avail himself of the opportunity to elucidate and settle upon a sure footing the rules that are necessary to regulate the singularly complicated and delicate relations which must always exist between orphan wards and their guardians and medical attendants. In fact, instead of grappling with the great medico-legal questions which induced Dr. Clark to bring his case before a public court, Lord Romilly has only left the whole matter in greater doubt and perplexity than ever, and overturned[1] one of his own previous decisions as to medical charges into the bargain. Thus all the time, all the trouble, and all the money had been uselessly expended! And, in the first momentary feeling of disappointment, I felt inclined to say: Oh! for one hour of Lord Eldon!

(§ 19). For all this reckless, profligate waste, both of time and money, I hold that the guardians of Eva Sanger are morally responsible. If they had accepted Dr. Clark's fair and reasonable proposal that the accounts should be referred to competent arbitrators, the mere money question in dispute might have been settled without incurring any law expenses whatever. But for some reason best known to themselves, the solicitors forced Dr. Clark, against his will, into the court of Chancery, which has no machinery capable of properly adjusting such matters, and which, notwithstanding the so-called reforms of recent years, seems to be pretty nearly in the same state as it was in the beginning of the last century, when a great poet and satirist[2] tells us—

> "That *in pure equity*—the case not clear—
> The Chancery takes your rents for twenty year."

(§ 20). With regard to the newspaper reports of "Sanger *v.* Sanger," considering the peculiar manner in which the subject was

[1] See the case of Clark *v.* Nichols, at pages 106-108.

[2] Pope's *Satires.*

monly allowed to entitle barristers? It is true that Dr. Clark's own counsel allowed that Dr. Clark's charges were large. One would like to know, however, how much the briefs of those learned gentlemen have cost Dr. Clark, and whether the fees which they are accustomed to derive from their clients fall on an average very much below the rate at which that medical gentleman charges his patients. If a tariff were to be fixed for law proportionate to that which the Master of the Rolls adjudges to medicine, would not the legal profession, and especially the Bar, have to deplore a loss of income which lawyers could now incur only from circumstances affecting their labour market, so as to occasion a tremendous fall in fees?"—*Punch*, March 27th, 1869.

dealt with by the judge, and the determined effort that was made to poison the mind of the public *before the case was heard,* it is not, I think, a matter of wonder that those reports in many instances presented a very imperfect, inaccurate, and even distorted view of Dr. Clark's character, conduct and claim. Of some of these I have already spoken,[1] and with respect to others, I shall have occasion to say a few words hereafter. But I may observe that, instead of being unanimous, the opinions expressed by his censurers were so much at variance with each other, that I thought they could not be entitled to much weight or influence. I have already remarked that, like the learned judge himself, scarcely anyone seemed aware that his claim involved issues of much graver import to orphan wards of Chancery, and to medical men, than the mere amount of pecuniary recompense he could legally recover.

(§ 21). At the same time let me gratefully acknowledge, that if all the facts had been fairly and fully disclosed, Dr. Clark could evidently perceive, in several quarters, a willingness to discuss the questions at issue between the guardians and himself, in the spirit of fairness and candour which usually distinguishes the able men who, by means of the Press, exercise a most powerful influence upon public opinion.

(§ 22). Indeed, it would appear that the Master of the Rolls himself was dissatisfied with the process and result, and accordingly regarded his own judgment as merely a provisional stage in the proceedings. "As it is very likely this will go further," he says, "I think it proper to state "——— certain particulars, on which the reader will find the proper remarks in subsequent chapters. What his lordship thus states sufficiently demonstrates, as a foregone conclusion, that his decision was grounded in prejudice and in misrepresentation as to the evidence by which he had been guided on the points objected to by him; namely, the visits to Worthing and Brighton, and the "lump sum of forty guineas," on which the needed information will be supplied. This will be done in the course of the concluding chapters. That his lordship could not have considered his judgment final, is clear from the very careless, illogical and ungrammatical way in which it was delivered. As he looked forward to further proceedings, these were matters of indifference as the case stood; ultimately, no doubt, a judgment would be arrived at which should be as correct in its terms as it would assuredly be in principle.

[1] See Chapter I.

CHAPTER XI.

§§ 1-2. ORIGIN OF THE THREE ORDERS OF THE MEDICAL PROFESSION, PHYSICIANS, SURGEONS AND APOTHECARIES. —§§ 3, 4. ALLEGED DISTINCTION BETWEEN MEDICINE AND SURGERY CONTROVERTED — ILLUSTRATIONS OF ITS INEXPEDIENCY IN CERTAIN CASES.—§§ 5-11. GENERAL PRACTITIONERS. — § 7. PHYSICIANS' FEES FORMERLY HONORARY — § 8. EXCEPT BY SPECIAL AGREEMENT.— § 9. ALTERATION OF THE LAW BY THE MEDICAL ACT, 1858.—§§ 9-12. PHYSICIANS CAN NOW RECOVER THEIR FEES.

"I consulted this morning [7th Feb., 1775] the President of the London College of Physicians,[1] who says that with us *Doctor of Physic* (we do not say *Doctor of Medicine*) is the highest title that a practiser of physick can have; that *Doctor* implies not only *Physician* but teacher of Physick; that every *Doctor* is legally a *Physician;* but no man, not a *Doctor,* can practise physic but by licence particularly granted. The Doctorate is a licence of itself."—BOSWELL'S LIFE OF JOHNSON. Case of Dr. Memis, A.D., 1775.

"With us there was a doctour of phisike;
In all this world ne was there none him like,
To speke of phisike and of surgery."
CHAUCER.—*The Prologue,* v. 415.

"Undoubtedly the general understanding formerly was, that a physician practised in the expectation of an honorarium, not of a remuneration which he could demand as a legal right. The presumption was that the practice was in this sense gratuitous. This presumption is now reversed. A physician registered under the 'Medical Act' (1858) is, in the absence of a distinct understanding to the contrary, entitled to be paid for professional practice, if not restrained by a by-law of the College of Physicians.'—LORD CHIEF BARON POLLOCK.[2]

(§ 1). Much use was made in the affidavits filed on the part of the guardians, and in the discussions which arose before the chief clerk of Lord Romilly, of the circumstance that Dr. Clark is a physician as well as a surgeon, or what is called, in popular language, a "general medical practitioner."

(§ 2). If it came within the scope of the present inquiry, I might be tempted to investigate the question whether, in the

[1] Dr. Thomas Lawrence, the physician and intimate friend of our great lexicographer, Dr. Johnson.—See *Munk's Roll of the Royal College of Physicians of London,* vol. ii., p. 135, Lond., 1841, 800.

[2] Gibbon *v.* Budd, Hurlstone and Coltman's Reports, vol. ii., p. 97.

early days of English history, the professors of the two branches of the healing art, distinguished by the names of Medicine and Surgery, were ever rigidly divided into two separate classes by any clearly-drawn line of demarcation. We know that for a long time the profession of medicine was chiefly confined to the clergy, who indeed were almost the only persons in those days that possessed any share of learning. Surgery, however, was given up to the laity, as the clergy were prohibited, by the canons of the Church, from undertaking any operation that involved the shedding of blood. Hence, it is said, arose the distinction of the three regular orders of the medical profession, viz., PHYSICIANS, SURGEONS, and APOTHECARIES; and I believe it is chiefly custom that has decidedly distinguished the classes of the profession, and assigned to each its peculiar avocations.

(§ 3). That the "doctor of physic" of the olden times was well skilled in surgery also, is plain from the passage I have cited at the heading of this chapter, from the work of our grand old poet CHAUCER. I would observe, moreover, that very soon after the original constitution of the College of Physicians by Henry VIII., an Act of Parliament was passed, in 1540,[1] enacting that physicians, then possessing the exclusive privilege of practising medicine within seven miles of London, should have authority to practise surgery also. It was, indeed, expressly declared that "the science of physic doth include surgery as a special member and part of the same,"—a doctrine which, at a later period, was wholly repudiated by the collegiate body. Yet it seems that quite recently they have determined to revive, in a modified form, the powers conferred by that old Act of Parliament, which so long have lain dormant, by granting licences to practise surgery as well as licences to practise medicine.[2] It follows from what I have stated, that the original founders of the London College of Physicians had no intention to establish the

[1] 32 Henry VIII., c. 40, "For Physicians and their Privileges."

[2] At the last Session, held 10th July, 1869, of the General Council of Medical Education and Registration, the registrar read a letter from the president of the Royal College of Physicians of London, enclosing a copy of the licence of that body. Dr. Storrar said, "Under the Act of Henry VIII., the Royal College of Physicians had power to grant licences to practise surgery." The communication and copy licence were received and entered on the Minutes of the Council; and Sir D. Corrigan is reported to have said, "That he should like to see the College of Surgeons and the College of Physicians fighting the matter out."—*Lancet*, 24th July, 1869. Sir D. Corrigan, however, will find that the College of Physicians have not in the smallest degree exceeded their statutory authority. Indeed, the important department of the Government—the Poor Law Board—acting doubtless with the best legal advice, have already resolved to recognize the licence in question as conferring the right to practise both medicine and surgery, and qualifying the holder for the office of medical officer under the regulations of the Board.—*Ibid.*, August 7, 1869.

marked line of distinction which now exists between the pure physician on the one hand, and the pure surgeon on the other.

(§ 4). Whether the establishment, in modern times, of that distinction has tended to the advancement of medical science, or been beneficial to the public at large, are questions which I shall not venture to discuss. But some instances have been reported in which a rigid adherence to the technical rule became the subject of much comment and observation. For instance, we can all recollect that Sir Henry Halford, the very eminent president of the College of Physicians, is said to have carried his ideas of professional etiquette to such an extent, that he absolutely refused, when travelling by railway and no surgeon was near, to make use of a lancet, although it was supposed at that period that by using the instrument he might have saved the life of his friend. Again, I am informed that the late Sir Charles Bell, at Edinburgh, in reference to this division of physic and surgery, told an anecdote of the doctor of a French king, who declared that he "would build up a wall of brass between physic and surgery." In reply to which statement the French king naïvely replied with the question, "Pray, sir, upon which side of the wall would you place your patient?"[1] At the same time, I must own that my judgment and feelings would lead me to maintain the existing division of the profession into three separate orders.

(§ 5). The term "general medical practitioner" is, however, one to which no definite meaning can be attached, and is therefore objectionable. In one sense it may be said that all medical men are general practitioners, with the exception of the pure consulting physician, who strictly confines himself to medical, and the pure consulting surgeon, who limits his practice to surgical cases; but of these the number is comparatively small. Dr. Clark's qualifications, like those of a large proportion of his brethren, entitle him to practise medicine as well as surgery, and being both physicians and surgeons they may rightly enough be called "general practitioners," in order to distinguish them from the pure physicians and the pure surgeons. Yet they always maintain that they are entitled to charge and receive from their patients, according to the circumstances of each individual case, the usual fees and emoluments which every physician and surgeon of their own standing is by law entitled to recover.

(§ 6). One thing I should state, in order to explain Dr. Clark's professional position: he holds no qualification, nor did he ever

[1] "Pure surgery (and for the matter of that 'pure' medicine too) is almost an impossibility in the present day, for the art of healing is so bound together that it is impossible for a man to practise one part without invading, more or less, the other."—*Lancet*, Oct. 12, 1868, p. 465.

practise as an apothecary; and although in former times, but not recently, for the convenience of his patients and for other reasons, he has often supplied them with medicines; and although he intentionally did so in the case of Eva Sanger, he never derived profit to the extent of one single farthing from drugs.

(§ 7). Let me now say a few words respecting the legal right of a physician to recover his fees, like any other ordinary debt, by process of law—a subject upon which mistaken ideas prevail in many quarters at the present time. "No doubt," says a very able and intelligent writer,[1] "the generosity of medical men in making all their useful discoveries known,[2] and their readiness to give rather than sell their attention and advice, arise in part from the original idea of the profession, which some believe to have had its primary root in pure benevolence." Whether this be the fact or not, there is no doubt that formerly the physician practised in expectation of an honorarium or honorary reward only, and his services were rendered so far gratuitously that he had no power to enforce any payment. The presumption of the law was, that he did not practise for lucre or gain; and so, whether he wished to obtain remuneration or not, his fees could not be demanded or recovered, like an ordinary debt, as a matter of strict legal right.[3] "If a person passes himself off as a physician," said Lord Ellenborough, when expounding the law in force at that period, "he must take the character *cum onere* when he brings an action for visits paid by him as physician. I will give him credit for being so, and tell him he must trust to the honour of his patients."[4]

(§ 8). The rule of law then prevailing was tersely expressed

[1] *Daily Telegraph*, March 17, 1869.

[2] "In their calling alone it is considered infamous that a man should keep secret, for the sake of exclusive profit, any invention or discovery. An engineer, a mechanician, or an author 'reserves his rights,' but no medical man does; he leaves that for quacks. If the most eminent physician or surgeon in England discovers a new method, instrument, or means of cure, he feels it his duty to publish and explain it in such a way that the youngest country surgeon may, without expense, avail himself of it; and no idea of reserving the exclusive profits ever enters into his thoughts."—*Ibid.*

[3] So decided by Lord Kenyon, C.J., in the year 1801, in the case of *Chorley, M.D.*, v. *Bolcot*, 4 T. R., 317. "It is rather strange," observes Mr. Willcock, "that the whole argument should have rested on a quotation from Tacitus, and that the Court should have considered a refutation of that authority a sufficient reason for deciding the contrary."—*Willcock's Laws of the Medical Profession*, p. 113.

[4] *Lipscomb* v. *Holmes*, 2 Camp., N.P., 441.

by a learned judge[1] in a case of later date, in which he observed that "the physician had a claim, usually recognized, to remuneration for his services; but he had no legal title to it." But then, on the other hand, it was equally true that it was within his power to prevent the operation of that rule by law by simply entering into an express agreement beforehand with his patient, that he should be entitled to remuneration for his professional aid. "It was competent," says Mr. Baron Bramwell,[2] "for the physician to stipulate, that if he attended the patient it must be upon the terms that the patient undertook to pay his fees, as matter of contract which he could enforce." He was, in fact, always able to recover where he could prove the existence of an actual contract. This doctrine was clearly established in the year 1842, by the judgment of the Court of Queen's Bench in the case of *Veitch* v. *Russell*, the noble and learned Lord Chief Justice, Lord Denman,[3] observing, that "if there was an express contract for remuneration the character of physician would not prevent a party from availing himself of such contract." So even at that time the common expression that a physician could not recover his fees was not accurate. Still further, it had been adjudged that, if he acted both as a physician and surgeon he could recover for services rendered in the latter capacity, although not for those rendered in the former.[4]

(§ 9). All uncertainty, however, as to the legal right of the physician to demand and recover his reasonable charges have now been finally set at rest by the passing, in 1858, of the "Medical Act," which might be rightly termed the Magna Charta of medicine and of surgery in the United Kingdom.[5] By the 31st section it is enacted[6] that "*every physician, surgeon, and*

[1] Mr. Justice Coleridge, in *Veitch* v. *Russell*, Adolphus and Ellis's Reports, vol. iii., p. 928.

[2] *Gibbon* v. *Budd*, Hurlstone and Coltman's Reports, vol. ii., p. 100.

[3] *Veitch* v. *Russell*, *ut supra*. That upright judge, Lord Denman, was himself the son of an eminent London physician.

[4] So decided by Mr. Justice Maule, in 1841, in the case of Dr. Robert Battersby, who practised at Torquay, both as a physician and a surgeon. (*Battersby* v. *Lawrence and others*, Carrington and Marshman's *Nisi Prius Cases*, pp. 277, 279). And the same doctrine was laid down by Lord Denman, in 1842, in the case of *Little* v. *Oldaker*, the plaintiff being the eminent Dr. W. J. Little, then practising in London both as a physician and a surgeon, and afterwards one of the physicians of the London Hospital.—*Ibid.*, pp. 370, 377.

[5] The profession and the public are indebted for this Act to the sagacity and untiring exertions of the late distinguished statesman, Sir James Graham.

[6] 21 and 22 Vict., c. 90 (1858).

apothecary, registered under this Act, shall be entitled, ACCORDING TO HIS QUALIFICATION OR QUALIFICATIONS, *to practise medicine and surgery, and to demand and recover in any court of law reasonable charges for his professional aid.*" But it also provides, with regard to physicians, that this shall not prevent any college of physicians from prohibiting their fellows or members from demanding a fee. "The object of this section," said Lord Chief Baron Pollock,[1] "is to set at rest all doubt as to the right of a physician to recover his fees, but to enable the fellows of the college, if they desire that the dignity of their body should be preserved by practising for an honorarium, to effect this by a bye-law." Accordingly the Royal College of Physicians of London have passed a bye-law prohibiting one section of their body —the "fellows," who are comparatively few in number—from suing for fees; but the bye-law does not extend to the members, licentiates and extra-licentiates of the college,[2] who are therefore left at liberty to have recourse to law or not, according to their own unfettered discretion. Nor, of course, does the bye-law extend to Dr. Clark, or to the great body of physicians in the United Kingdom who are not connected professionally with the London college.

(§ 10). Notwithstanding the very explicit language of the "Medical Act," a doubt arose afterwards, which was, however, effectually removed by the judgment of the Court of Exchequer,[3] in the year 1863. Dr. Gibbon, a member of the Royal College of Physicians of London, duly registered under the Act, sued the executors of the late Henry Budd, Esq., to recover twenty guineas for twenty professional visits paid to the deceased in 1861. It was argued on the part of the defendants that, notwithstanding the "Medical Act," a physician was still disabled from recovering fees for advice without a special contract. But Lord Chief Baron Pollock gave judgment in favour of Dr. Gibbon in the terms set forth at the heading of this chapter. Mr. Baron Martin also said that "*the meaning of the 31st section is simply this:—Hitherto a physician could not recover his fees; if registered, he may now do so.*" And Mr. Baron Bramwell further observed that the meaning was, that "*a physician, when registered, shall be, as to remuneration for his services, in the same situation as any other person.*"

(§ 11). But here let me again observe that the law recognises only three orders of the medical profession: PHYSICIANS, SURGEONS, and APOTHECARIES. Hence it follows, that every medical man

[1] *Gibbon* v. *Budd, ut infra.*

[2] *Wharton's Law Lexicon, tit.* "Physicians."

[3] *Gibbon* v. *Budd,* Hurlstone & Coltman's Reports, vol. ii., pp. 92-101.

seeking to recover his charges in a court of law, must necessarily sue for medical or for surgical services, or for both, *according to his special qualification or qualifications as a physician, a surgeon or an apothecary*;[1] and the fees he claims must be "reasonable" in amount, and such as are usually paid to other members of the particular branch of the profession to which he belongs, with due provision for increased remuneration in exceptional cases. It would be very incorrect, if not absurd, to say that, irrespectively of his legal qualifications as physician, surgeon or apothecary, some special scale of charges must be adopted by a practitioner who, in popular phraseology, may be styled a "general" or an "ordinary" medical practitioner,—the simple fact being, that such phrases have no definite legal meaning, and the individual to whom they are applied is not, *eo nomine*, recognized at all by the law of England. The arguments which were advanced against Dr. Clark's claim on the ground that he practised both medicine and surgery, are, therefore, I submit, perfectly futile.

(§ 12). Lastly, it is now the settled law of England that, since the passing of the "Medical Act," a physician who is registered thereunder, and who is not prohibited by the bye-laws of any college of physicians from suing for his fees, can recover such fees in all cases.[2]

[1] "We best consult the honour of this profession, and, what is of higher importance, we secure the health of the people, by strictly enforcing the laws which provide that those who practise any branch of this art should be regularly educated in that branch."—*Lord Chief Justice Best* in *Allison* v. *Haydon*, 3 Car. and P., page 246, 8 G. 4.

[2] See Addison on Contracts, by Cave, ed. 1869, p. 901.

CHAPTER XII.

§ 1. MEDICAL MEN MUST SUPPLY THE NEEDS OF ALL CLASSES. —§ 2. CONSEQUENTLY THERE CAN BE NO FIXED TARIFF. —§§ 3, 4. DIVERSITY OF CHARGES A NECESSARY EVIL. —§ 5. DR. CLARK'S SYSTEM.—§§ 6-8. CASE OF CLARK V. NICHOLLS.—§ 6. REMARKABLE AND UNHAPPY CONFLICT BETWEEN LORD ROMILLY'S DECISION IN THAT CASE AND IN SANGER V. SANGER. — § 10. ANSWER TO LORD ROMILLY'S OBJECTIONS TO THE LONDON ATTENDANCES. — § 11. RIDICULOUS MEDICAL TESTIMONY RESPECTING MEDICAL FEES COLLECTED BY THE GUARDIANS—A NEW MEDICAL MARCH THROUGH COVENTRY.—§ 12. A VETERINARY SURGEON OR COWLEECH WOULD OFTEN CLAIM HIGHER FEES.—§§ 13-16. A LOW FIXED TARIFF NOT ADAPTED FOR YOUNG LADIES AT SCHOOLS OR ELSEWHERE —THE CHEAP "CONTRACT" OR "FARMING" SYSTEM INAPPLICABLE, UNWISE, AND PERILOUS—SUITABLE ONLY FOR "DOTHEBOYS' HALL." — §§ 17-20. REASONS FOR SUPPLYING MEDICINES TO EVA SANGER—PHYSICIANS MAY COMPOUND AS WELL AS PRESCRIBE—LAUDABLE EXAMPLE OF AN EMINENT LONDON PHYSICIAN.

"I should have reduced the ordinary attendances from time to time. . . . I should have very seriously reduced the amount of the items."—LORD ROMILLY'S *Judgment in Sanger* v. *Sanger*.

"I think considerable credit is due to the medical gentlemen for the manner in which the dear child's complaint was arrested."—*Mrs. Twigg to Mr. Godwin*, May 2, 1866.

"*I may have said to Dr. Clark, and I certainly intended to convey the meaning, that no money could compensate him, because I believe that he had been very successful in a very critical case. . . . I cannot say whether I consider a charge of one guinea per visit exorbitant; that would depend upon the character of the malady.*"—Deposition of Mr. Serjeant Atkinson, June 18th, 1868.

"Such fees (*i.e.*, such fees as those proposed by the acting guardian of Eva Sanger) would, in many instances, be less than an expert veterinary surgeon or cowleech would charge for attending a valuable animal."—*Dr. Collins's Affidavit*, Dec. 5, 1868, par. 17.

(§ 1). To supply the varying necessities of civilized society, the three great orders of the medical profession, PHYSICIANS, SURGEONS, and APOTHECARIES, have arranged themselves for the purpose of professional practice into several branches. Acting

within their respective spheres of duty they accommodate the different classes of patients, and treat the diversified maladies or injuries to which mankind are daily exposed; one main object of such division being to render medical and surgical aid available to the poor as well as to the rich. The true theory is, or ought to be, that by means of some such wise arrangement, and with the help of the numerous hospitals and eleemosynary institutions scattered throughout the country, and affording gratuitous medical relief to the really destitute poor,[1] every man in every position of life within the United Kingdom is able, in the hour of sickness, to secure the skilful help of a duly qualified practitioner, and can never be left, under any circumstances, to die unseen or neglected, or to expose his health or his life to the ignorant experiments of the empiric or the quack.

(§ 2). It is a notorious fact that no fixed tariff of fees and charges ever existed among medical men. The fees of the physician have always varied in amount, and we have seen that until lately[2] they stood upon a different legal footing to those of the surgeon and the apothecary. The pure apothecary also has always had his own peculiar system of practice and of charges. Even among those who devote their attention either to medicine or to surgery only, and who are styled pure physicians or pure surgeons, the greatest diversity prevails.[3] Again, with respect to the great body of medical men who, with varying legal qualifications, undertake to attend both medical and surgical cases, and are popularly known as "general practitioners," there has always been a still more remarkable discrepancy, both in the style of their practice and the amount of fees they claim for professional advice and attendance. Some of them claim and receive the same fees as physicians or surgeons. At the same time it must be acknowledged with regret, that many, who are very able men, are forced by circumstances to render their services for sums extremely low. Lord Denman, I think, once commented on the fact, and said "that he would never think of allowing any qualified practitioner less than five shillings per visit." Henry Bickersteth (Lord

[1] "No profession in the world equals theirs (the medical) in disinterested devotion to the interests of science, and kindness to their fellow men. We never hear of solicitors, architects, or barristers working without fee for the needy; yet this is what every eminent physician has done, and is doing every day at the great hospitals with which he is connected, at his own house, or sometimes in the very homes of the indigent." —*Daily Telegraph*, March 17th, 1869.

[2] See pages 99-102.

[3] "The minimum fee of a guinea is practically obsolete with the younger class of physicians; for though they are afraid to ask less than a guinea, they will give two, three, or four visits for a guinea."—*Daily Telegraph*, March 17, 1869.

Langdale),[1] in the letter which he wrote, in 1800, to his father, a country general practitioner, mentioned "inadequate payment" as one reason for his own dislike to the medical art, and for dissuading his brother Robert from choosing it as a profession. But I may say at once, that it would be impracticable, without incurring an unprofitable expenditure of time, to classify "general practitioners" accurately, or to describe the fluctuating and discordant standards of remuneration which at various times, in various localities and under special circumstances, have been established; and so I must content myself with the obvious remark that "general practitioners" differ *inter se* with respect to their scale of professional charges, far more than the charges of many of them differ from those of the physician or the surgeon.

(§ 3). If this diversity of charges be an evil, it certainly seems to be one that admits of no complete remedy. It would be quite impossible, and, in fact, unreasonable, if it were possible, to lay down any fixed scale or rate of charges to be adopted in all cases by the three orders of medical men, and especially by those who practise surgery as well as medicine. Yet let me say that, in attending surgical cases, a physician does not forfeit any of his legal rights as a physician; but so long as he continues so to practise he shuts himself out from being recognized by the public as a "pure physician," and, moreover, if he be a member or licentiate of the Royal College of Physicians of London, he can never be elected to the higher rank of "fellow" of that ancient collegiate body. But, with regard to the pecuniary recompense, the variance (if any) does not arise in many instances from any difference in the legal qualifications or in the right to recover fees, but simply and solely from the altered character of the practice, and the difference existing between the several classes of patients by whom their services are sought. The aid of the "general medical practitioner" is alike required by every class in society, from the highest to the lowest, from the richest to the poorest; and to say, under such circumstances, that the medical fee shall always be the same in amount would be simply absurd.

(§ 4). To illustrate this part of the subject, I may quote again a striking passage that appeared in connection with the case of Eva Sanger, in the leading article of one of the daily newspapers:[2]—

"The most cogent defence for the present irregular and cloudy system is, that under cover of it, charity, kindness and goodwill can best accommodate themselves to the varying dispositions of the doctors and the circumstances of each case. A great physician can practically compel a rich miser to pay very high fees, and can in requital forgive all to the next poor actor, actress, or literary man whom he restores to his work. Any fixed or legalised system might not so readily permit such judicious and generous discrimination."

[1] See page 53. [2] *Daily Telegraph*, March 17, 1869.

(§ 5). With respect to Dr. Clark's practice his charges vary according to the circumstances and maladies of his patients. I believe that all medical men, whether physicians, surgeons, or apothecaries, must, like himself, be guided more or less by their own judgment and discretion in claiming their reward from the different classes of persons they are called upon to attend. Thus, in visiting the master or the principal of an establishment, Dr. Clark would often give his advice gratuitously to a servant or other person in the master's employ; or if he received any remuneration at all, the charge to the servant would differ largely from that to the master. Again, in treating persons who earn their livelihood by the practice of some art or profession, such as the artist, the musician, the actor or actress, the governess, or the literary man, there is much need for discrimination. In some cases he might consider that they are unable to pay for medical advice and attendance, in others he might claim only a moderate fee; and in all instances the guiding, or I might even say "golden" rule of the medical practitioner should be, I think, to regulate his charges according to the position and pecuniary means of the patient. Speaking for Dr. Clark personally, I should, indeed, be sorry to learn that the course he adopted in Eva Sanger's case has encouraged any professional brother to charge more in any instance than the patient can afford to pay. Where his services have been required it has been his wont to go irrespectively of his fee. Yet in suitable cases he claims one guinea for a visit, which he considers the fee to which he is legally entitled as a duly qualified and duly registered physician and surgeon.

(§ 6). Accordingly, in visiting patients of the same rank in life, and possessing pecuniary resources equal to those of Eva Sanger, Dr. Clark claims to be entitled to the same rate of remuneration as he recovered in CLARK *v.* NICHOLLS, in the year 1864. In that case the question arose as to his legal right to recover his full fees. After a conflict of great severity the present Master of the Rolls gave judgment in his favour:—

CLARK *v.* NICHOLLS.

His claim was for professional attendance in a surgical case, during a period of twenty-three days only, upon a gentleman of very advanced age, named Nicholls, who lived in Claremont Square, and died there on the 11th of August, 1863. Mr. Nicholls died intestate, possessing property of the value of £8,000, which became divisible between two nephews, who were his sole next of kin. Under the advice of Sir William Fergusson, who had seen the patient in consultation with him, Dr. Clark claimed £100 for his services. The nephews objected strongly to his claim, and their statements led him to form a very erroneous idea with respect to

the amount of property which had come to their hands by the death and intestacy of their uncle. This induced the Doctor to write to them offering to reduce his account to £75; and I transcribe the letter, as it shows the principle by which he has always been guided in such matters:—

Dear Sir,— St. Mark's Square, November, 1863.

I beg to forward your account reduced to £75. In case the amount is now more than the circumstances of your deceased uncle will afford, a further reduction shall be made; but I do not think it is fair for me to be asked to do so unless this is the case, or unless Mr. Fergusson or a surgeon of his position recommended it. Indeed, I consider that my account is only proportionate to the accounts which you have previously paid me.

Yours, &c.,

Adolphus Nicholls, Esq. JAMES CLARK.

The nephews were still dissatisfied, and offered him £30 in full discharge of his claim, and, like the guardians of Eva Sanger, they refused to allow the matter to be decided by arbitration. Being thus forced into litigation, he instituted, in March, 1864, the suit of CLARK *v.* NICHOLLS. The chief clerk (Mr. Hume) entered into the facts with great care and minuteness on five separate occasions, and ultimately directed that the nephews should pay him £79 4s. 0d.; *videlicit*, £75 for his professional attendances, and £4 4s. 0d. for moneys he had disbursed. In pronouncing his opinion, Mr. Hume observed, that in the case of a relative or friend of his own the medical charges incurred in a shorter space of time than twenty-three days had been much larger, and that he would have allowed him the full £100 if he had not written the letter agreeing to a reduction of his claim.

(§ 7). Subsequently the nephews of the late Mr. Nicholls brought the matter before the Master of the Rolls in person, and, after hearing the solicitors on both sides, and taking time to peruse all the papers, his lordship confirmed the previous determination of his chief clerk, and ordered the nephews to pay all the costs of the suit.

(§ 8). Dr. Clark's scale of charges in that case was based on the assumption that he was legally entitled to one guinea for the first visit, and half a guinea for every subsequent visit on the same day, and three guineas for attendance during the night. I extract the following from his account as a sample:—

1863.		£	s.	d.
July 27.	Visit in the morning . . .	1	1	0
„	„ during the day . . .	0	10	6
„	„ in the evening . . .	0	10	6
„	Attendance during the night .	3	3	0
„ 28.	Visit in the morning . . .	1	1	0
„	„ during the day . . .	0	10	6
„	„ in the evening . . .	0	10	6
„	Attendance during the night .	3	3	0

I have already observed that the malady of Mr. Nicholls was one which Dr. Clark treated in the capacity of a surgeon; and I should add that in order to alleviate the pain of the aged sufferer, it was needful that he or his pupil should often afford relief by means of a slight surgical operation. But at the same time it is perfectly clear that the £75 which the Master of the Rolls awarded to him was much larger in proportion than the sum he claimed from the guardians of the little girl Eva Sanger. In the case of Mr. Nicholls his only duty was to assuage pain, his patient being a man so old and so infirm, that it can scarcely be said he had any life to preserve. But as regards Eva Sanger he successfully undertook the heavy responsibility of endeavouring to save the life of a very young unprotected orphan ward of Chancery, afflicted with a malady which would test the skill of the most accomplished physician, and who, if she lived to the age of twenty-one years, would become possessed, under her late father's will, of a fortune of twelve or fifteen thousand pounds at the least. In both instances the surrounding circumstances justified his demand.

(§ 9). The two cases being, moreover, supported by the same or nearly the same medical testimony, and the claimant being the same individual, it was only reasonable to expect that the decision would be the same. *Ubi eadem est ratio eadem est lex.* But I am informed that Lord Romilly went even further than "his chief clerk"[1] had done, by *wholly refusing to listen to any of the circumstances relating to his former judgment in Dr. Clark's favour in Clark* v. *Nicholls;* and the simple result is, that such judgment in Sanger *v.* Sanger, as regards the charges for the visits paid in London, is in direct conflict with his lordship's previous decision.

> "Thus hath the course of justice wheeled about!"
> RICHARD III., *act.* iv., *scene* 3.

And yet what, I think, should be especially regretted is, that in so upsetting his former judgment his lordship did not state why he has changed his opinions, or lay down some other principle for the future guidance of medical men. Without feeling any disrespect towards the Master of the Rolls, we can only come to the conclusion that such grave matters should not be left to the mere discretion of chief clerks, or even of a single judge, however learned or eminent. "*Misera est servitus ubi jus est vagum aut incertum.*" "The discretion of the judge," says Gibbon, at the close of his great chapter on the Roman jurisprudence,[2] "is the first engine of tyranny."

(§ 10). The Master of the Rolls further made the announcement I have placed at the head of this chapter, which surprised me not a little: '*I should also have reduced the ordinary attend-*

[1] See page 79. [2] Gibbon's "Decline and Fall," c. xliv.

ances from time to time!" Now the Physician in Ordinary to her Majesty[1] had distinctly sworn that the visits to his patient in London, as well as those in the country,[2] were not unnecessarily frequent, but on the contrary, the child required constant attention. So also the guardians, in offering him one hundred guineas,[3] whilst the matter was pending in Judges' Chambers, raised no demur as to the frequency of the London attendances; the chief clerk likewise acknowledged their propriety by allowing them all.[4] And Sir Richard Baggally, the leading counsel of the guardians, had declared in open court that no objection would be raised either as to the necessity or the number of those visits. Yet, notwithstanding this accumulated weight of uncontradicted testimony in Dr. Clark's favour, Lord Romilly used the words I have quoted: "*I should also have reduced the ordinary attendances from time to time.*" Upon what grounds would he have reduced those attendances? Does he recognize or reject the wise old maxim, "*Cuilibet in arte sua credendum?*" Or would he imitate the example of the acting guardian and the schoolmistress of Eva Sanger by acting upon his own individual opinion, in a purely medical case, in opposition to the deliberate judgment of Sir William Jenner and Dr. Clark? Will he attempt to dictate to a medical practitioner as to how often he should see a ward of court whose life is in imminent jeopardy? Would any medical man of good position consent to such dictation? Speaking only for himself, Dr. Clark, through me, says plainly that he will have none of it.

(§ 11). With respect to the London attendances, it was said by the anonymous correspondent of the *Daily News*, that "the evidence obtained by the guardians showed that his charges were not the usual ones of practitioners of his own standing." Now it is certainly true that three affidavits were filed of "general practitioners," one of them being in the country, and the other two in the suburbs of London, viz.:—

(1). Dr. Frederick Goodchild, of Leamington.

(2). Dr. Charles Corbett Blades, of Kennington Park, Surrey, Surgeon to the L Division of the Metropolitan Police Force;[5] and

(3). Dr. James Turle, of St. John's Wood, who, together with other qualifications, holds a diploma from the Society of Apothecaries.[6]

[1] Sir William Jenner. [2] See Aff. in App. No. 1. [3] See p. 76. [4] See p. 86.

[5] "With regard to the affidavit of Dr. Blades, I observe that he carries on his practice at Kennington and Camberwell, where, I am told, the scale of medical charges is often extremely low; and, moreover, it is probable that, as one of the medical officers of the metropolitan police, he is accustomed to render his professional services upon what might be termed cheap or moderate terms."—*Dr. Clark's Affidavit*, 12th January, 1869, paragraph 4.

[6] "As regards the affidavit of Dr. Turle, it appears that he is an apothe-

Some persons might feel inclined to laugh, and say that by going into court, supported only by such a motley troop of medical witnesses, the guardians of Eva Sanger were endeavouring to rival the famous "march through Coventry" of a great hero so admirably depicted by Shakespeare. Speaking quite seriously, however, unless he had the clearest proof of the fact, could any sane man in the kingdom suppose that a judge would allow the opinions of those three doctors, on any medical subject, to weigh "even as a feather" in the balance, in opposition to the united testimony of such men as Sir William Jenner, Sir William Fergusson, Professor Russell Reynolds, Dr. Foster Reeve, Dr. Collins, and Dr. Browning Smith? The object of these affidavits of Drs. Goodchild, Blades, and Turle was to show, if possible, that some fixed tariff of charges existed among medical men, and that those gentlemen were themselves in the habit of charging their patients 3s. 6d. and 5s., or, as the highest fee, 7s. 6d. per visit, with even smaller fees for schools; and really if that sort of evidence could be of any avail in a case like Eva Sanger's, it might easily have been procured to an almost indefinite extent upon application to other practitioners living in the outskirts of London, whose fees, in many instances, are regulated according to a scale that is still more discreditably low. But in reply to these affidavits Dr. Clark's nearest professional neighbour,[1] who has been engaged in large and lucrative practice for more than twenty-five years, and is both a physician and surgeon, like himself, deposed that the "opinions or ideas" expressed by Dr. Goodchild, and by Dr. Blades (the police doctor), and by Dr. Turle (who is a member of Apothecaries' Hall), as to the existence of some fixed tariff of charges, were erroneous, and "not entitled to any weight or influence whatever." He said, moreover, that the opinion expressed by those gentlemen, that experienced physicians and surgeons of good standing would accept the small sums mentioned in their affidavits "as ordinary fees in all cases for professional visits, was one that he considered to be highly derogatory to the character, and injurious to the interests, of the profession at large." Again, another practitioner,[2] who was the medical attendant and closed the eyes of the late Lord Macaulay, stated that the views of Dr. Goodchild, Dr. Blades, and Dr. Turle, with regard to cheap professional attendance, "were not only derogatory to the profession, but unsafe and dangerous to the patients themselves." One thing at any rate is very plain: the sums mentioned by

cary, which I am not, and, of course, as an apothecary he may lawfully charge, and probably does charge for and make a profit from, the medicines he supplies to his patients, which I cannot do, nor would even think of doing if I could."—*Dr. Clark's Affidavit*, 13th January, 1869, paragraph 6.

[1] Dr. Collins's Affidavit, filed Dec. 12, 1868. See extracts in Appendix.

[2] Dr. T. Browning Smith. See extracts from his Affidavit in Appendix.

Drs. Goodchild, Blades, and Turle are not the regular fees which *a duly qualified and duly registered physician* is by law authorised to claim and to recover. They can attend patients upon any terms they think fit; but their professional brethren will take very little heed of anything they say or do.

(§ 12). As to the acting guardian, Mr. Thomas Sanger, Dr. Clark was informed that he would only allow 3s. 6d. a visit, which, I think he said, he had been accustomed to pay his medical attendant when suffering from shingles; and it is indeed a notable fact that the fees which the guardians wished Dr. Clark to accept, after he had succeeded in saving the life of a ward of Chancery of ample means, were less than a veterinary surgeon or cow-leech would charge for attending valuable cattle.

(§ 13). It has also been urged that his young patients were two "school girls;" and I suppose the phrase was used in order to imply that, because the young ladies were at a London boarding-school, their medical attendant would be expected to visit them on a low uniform tariff of charges.

(§ 14). It is not the fact, however, that any respectable practitioner, when attending young ladies at first-rate schools, is in the habit of charging a fixed fee calculated at so much per head or so much per visit. Such a system would be open to very grave objections, and be fraught with peril, especially when applied to wards of court or to orphans, or to children like the little girl Eva Sanger, deprived by unhappy circumstances of all parental care and control. Now it is very true that the practice of contracting for medical advice at a fixed sum, or at so much per visit or per head, does prevail in workhouses, gaols, and orphan asylums and institutions of an eleemosynary kind, and perhaps also it may have found a footing in some private schools of inferior character. Yet I can scarcely believe that, in dealing with wards of Chancery, such arrangements would ever be approved by the Court, although some expressions fell from the lips of the Master of the Rolls, in pronouncing his recent judgment,[1] which seem to imply that his lordship would not be unwilling to enter into a "special arrangement" or bargain with a physician, and so try the hazardous experiment.

(§ 15). There can be little doubt that any system of cheap medical attendance upon young ladies or gentlemen of fortune at private schools would, in many instances, be highly vicious, if not perilous in the extreme. Indeed, I venture to think that medical men, in treating orphan wards of court, should act freely and independently to the best of their judgment for the welfare of the wards, without dictation or coercion on the part of guardians or schoolmistresses, or even of the judges of the High Court of Chancery. The medical attendant is the only individual

[1] See pp. 92, 128, 131, 132.

competent to decide as to what should be done, and how often he should visit a sick child; but of course if he neglected his duty, or in any way abused his professional power for mercenary ends, the parents, guardians or friends of the child or the court could at once discharge him from further attendance.

(§ 16). As to the medical fees for attendance at schools, they would be regulated, as in other cases, by a variety of circumstances which I shall discuss in another chapter.[1] But so far as our experience and knowledge extend, the charge would not be less in amount because the patients were attended at a school, instead of being with parents or friends at their own homes.

(§ 17). Another weak and unfounded argument against Dr. Clark's claim was raised before the chief clerk, and subsequently by the anonymous correspondent of the *Daily News*.[2] It was urged that he "supplied all the medicines"[3] to Eva Sanger; that he "frequently dispensed his own medicines, not only in the unostentatious neighbourhood of Penton Street, Pentonville, but also in St. Mark's Square," and that, at the latter place, he had what he described as a "surgery." But of course it did not suit the purpose of the anonymous writer to add that the medicines were only supplied for special reasons, or to suit the convenience of patients, and never with the remotest view to profit. As to the so-called "surgery" or "dispensing room" in St. Mark's Square, it was a private room, generally used for consultations and, by his pupils, as a place for study; and the pitiful sneer as to the "unostentatious neighbourhood" of Penton Street is highly characteristic of the writer of the letter, and of the cause he was instructed to defend.

(§ 18). The assailant has, however, only displayed his own ignorance of the subject. By supplying Eva Sanger, for very special reasons, and without fee or reward, with the medicines he had prescribed for her, Dr. Clark did not exceed or do anything inconsistent with his duties as a physician. In the treatise of an eminent Queen's Counsel[4] upon the "Laws relating to the Medical Profession," I find the following:—

"The first class of medical practitioners in rank and legal pre-eminence is that of the physicians. They are, by statute 32 Henry VIII., allowed to practise physic in all its branches, among which surgery is enumerated."[5]

The learned writer then goes on to say:—

"*The law, therefore, permits them both to* PRESCRIBE AND COMPOUND *their medicines, and as well to perform as to superintend operations in surgery.*"[6]

[1] See chap. xvi. [2] *Daily News*, March 20th, 1869.

[3] *Morning Herald*, March 18th, 1869.

[4] Willcock's "Laws relating to the Medical Profession," p. 30.

[5] See page 97.

[6] Unless restrained by the regulations established under statutory powers of the universities or colleges of which they are members.

And he concludes with the words :—

"These privileges are also reserved to them by the statutes and charters relating to the surgeons and apothecaries."

This being the established law of England, it is, I think, very plain, that in having the medicines of a patient like Eva Sanger prepared under his personal supervision, and in attending surgical as well as medical cases, Dr. Clark did not exceed his powers, or run the smallest risk of forfeiting his legal rights and privileges as a duly qualified and duly registered physician.

(§ 19). As it is not necessary for me to explain all the reasons which influenced his conduct in this matter, I shall merely quote the following passages which occur in an affidavit sworn by a physician and surgeon,[1] resident in his neighbourhood, and engaged in extensive practice :—

"He (Dr. Clark) may have adopted this course for various reasons: for instance, he might wish to see and to know that his prescriptions were duly made up and not tampered with or altered; or there might have been no chemist, or none in whom he had confidence, living in the neighbourhood of Mrs. Twigg's house at St. John's Wood; or he might have been influenced by thoughts or impressions derived from peculiar circumstances in the case or the conduct of those who had charge of the child. Whatever may have been the reasons of Dr. Clark, I can only say that the line of conduct he pursued is one which I have often had occasion to adopt in my own practice. It is also frequently resorted to by a physician and surgeon in any case of a perilous malady requiring the utmost care, vigilance, thought, and attention."

(§ 20). Upon this subject I shall only say further, that last year Dr. Clark had the honour of meeting in consultation a man of high professional standing and extensive scientific attainments—for twenty years physician to one of our largest London hospitals—who, on that occasion, acted precisely as the Doctor did in the case of Eva Sanger. Although a chemist's shop was near at hand, it was observed, with pleasure and gratitude, that he chose rather to make up, with his own hands, from bottles he kept in his house, the medicines which he had himself prescribed. Did he commit an illegal act or any breach of professional etiquette? On the contrary, will not his great reputation rise rather than sink in the estimation of the wise, when they hear of that act of kind, considerate, and enlightened condescension? Strengthened by so bright an example, and gladly remembering the success that resulted from the exertions Dr. Clark made for the young ward of court, I must own that I am really amazed at the extraordinary conduct of the acting guardian and his anonymous advocate, in arising such frivolous objections upon this and other points.

[1] Dr. Collins.

CHAPTER XIII.

§ 1. JOURNEYS TO WORTHING AND BRIGHTON.—§ 2 INSOLENT OBSERVATION OF THE "DAILY NEWS."—§ 3. CONSULTATION BEFORE THE JOURNEYS WITH THE ACTING GUARDIAN AND SOLICITOR—PROPOSAL APPROVED.—§ 4. DANGEROUS CONDITION OF THE CHILD—PENAL CONSEQUENCES OF DEATH FROM NEGLECT—MANSLAUGHTER OR MURDER?—§ 5. JOURNEYS TO BRIGHTON—LETTER OF 24TH JULY UNANSWERED — ACTING GUARDIAN COMMITS A CONTEMPT OF COURT, AND GIVES NO INSTRUCTIONS—DANGER OF THE PATIENT'S RELAPSE.—§ 6. REASONS FOR NOT EMPLOYING A LOCAL PRACTITIONER. — § 7. CHARGES REASONABLE.—§ 8. MILEAGE RATE OF PAYMENT TO PHYSICIANS—CASES BEFORE THE MASTERS IN LUNACY—"BRYANT *v.* JOHNSON" — DR. MACLOUGHLIN'S CASE — WAR AMONGST THE JUDICIAL DEITIES.—§§ 10-11. QUOTATION FROM A LEADING MEDICAL JOURNAL.—§ 12. SERIOUS QUESTIONS REQUIRING SOLUTIONS.

"I should have disallowed all the visits, both to Brighton and Worthing."—LORD ROMILLY'S *Judgment in Sanger* v. *Sanger*.

"Yet the demur raises a nice question. If a doctor is in charge of a case, and morally responsible for the patient's recovery, is he to follow it up with a zeal regardless of trouble and expense? or should he, through delicacy in making unauthorised visits, neglect a patient at a critical time?"—*Daily Telegraph*, March 17, 1869.

"Dr. Clark was the best judge whether these visits were necessary or not; and in the absence of any evidence to the contrary, we must say that on this point he has been harshly treated."—*Medical Times and Gazette*, March 20, 1869.

Qui non prohibet quod prohibere potest, assentire videtur.—*Maxim of Law.*

(§ 1). I now come to the specific charges to which the Master of the Rolls, acting on deficient or inappropriate evidence, took exception. As regards the journeys to Worthing and Brighton, it is not difficult to show (1) that they were necessary and not too frequent, and were, in fact, undertaken by Dr. Clark "for grave medical reasons;"[1] (2) that he acted "under competent authority;"[2] and (3) that the fees charged by him in respect of such journeys were

[1] *Lancet*, March 20, 1869. [2] *Ibid.*

less than those which a duly qualified and duly registered physician is by law entitled to claim and recover.

(§ 2). In a leading article which appeared in one of our daily newspapers,[1] it was said that, in undertaking these journeys he "forgot that he belonged to a liberal profession, and carried the principles of trade a little too far." I wholly deny the imputation. In fact the phrase is entirely inapplicable to him; and the decision of the Master of the Rolls disallowing the charges for those journeys has arisen from his total neglect of the usual precautions which men engaged in trade are in the habit of adopting. For instance, he did not doubt their integrity or think it necessary before going to Worthing to obtain any express authority *in writing* from the guardians or their solicitor, but the evidence went to prove that they acquiesced in the arrangement proposed to them.

(§ 3). I have already shown[2] that before a single country visit had been paid, Dr. Clark discussed the matter with the solicitor and the acting guardian, and made known his intentions to each of them. The former of these gentlemen (Mr. Godwin) expressed his personal approval of the plan proposed, but added that it was "no part of a solicitor's business to interfere in the matter."[3] His own sworn account of the interview is:—

"I saw Dr. Clark on 20th April, 1865; he told me that the invalid was going to the seaside. *He wanted to know about communications with her mother there, and as to medical attendance at Worthing.* I referred him to defendant, Thomas Sanger, and I told him that *it was no part of a solicitor's duty* to interfere in that matter."[4]

On the same day Dr. Clark had the interview with Mr. Thomas Sanger I have already mentioned,[5] and notwithstanding his denial, Dr. Clark repeats with unwavering confidence the statement he made on this subject when he was under cross-examination before the examiner of the Court of Chancery:[6]—

"After I had told Mr. Sanger of the proposal I had made to Mr. Godwin he acquiesced in it. I mean that Mr. Sanger conveyed to me the impression that he approved and did not disapprove of the arrangement with regard to my seeing her (Eva Sanger) as her medical attendant in the country. I will swear that he expressly approved of it in effect, though I will not swear as to the words in which he expressed himself."

I consider, therefore, that he had competent authority from the guardians for going to Worthing. Yet, placing the evidence in favour of his claim upon the very lowest footing, I would observe, that inasmuch as they well knew that he intended to see their

[1] *Daily News*, March 17, 1869. [2] See page 27. [3] See page 28.

[4] Mr. Godwin's Deposition, 18th June, 1868. [5] See page 28.

[6] Cross-examination of Dr. Clark, 2nd July, 1868.

ward at the seaside, and they did not prohibit him from going, the law of England will assume that they gave their assent.

"Qui non prohibet quod prohibere potest, assentire videtur."

(§ 4). It must not be forgotten that at this period[1] the little girl was in the most dangerous condition. It may have been well, therefore, for the schoolmistress and the guardians, that they did not prohibit him from visiting her at Worthing. For if after the representations made to them by Sir William Jenner and Dr. Clark they had deprived her of all medical aid, and her death had ensued through the want of such aid, could any of the parties have been held criminally responsible? And, if so, what would have been the name and nature of the offence—manslaughter or murder?

(§ 5). As regards the three subsequent journeys to Brighton, in August, 1865, I should mention that they were taken after Dr. Clark had written the letter of the 24th July,[2] in which he had clearly stated, that "*so long as he remained the medical adviser of Eva Sanger, he must be allowed to see her at such times as he deemed necessary.*" No objection whatever had been made to his previous visits to Worthing, nor did he receive from the acting guardian or his solicitor any reply to that letter of the 24th July, forbidding him to visit her at Brighton.[3] The acting guardian, it will also be remembered, instead of answering his letter,[4] had betaken himself and the elder sister to the Channel Islands, and thus committed a contempt of court. To have applied to the solicitor would have been useless; as he had plainly said that "it was not the duty of a solicitor to interfere in such matters." The schoolmistress had repeatedly declined all personal responsibility; the husband of the co-guardian (Mr. Serjeant Atkinson) had also said "that he had no permission to give." The "next friend" of an orphan ward appears to be a sort of person who has neither duty nor any kind of discretion to exercise. The mother had been silenced by Lord Romilly. By the force of circumstances, Dr. Clark was thus left to act according to his own sense of duty and responsibility. Although the child's health had greatly improved, there was still danger that a relapse might occur; and in that event the result might have been disastrous. To guard against such a relapse, he took those three journeys to Brighton; and I maintain that he would have grossly neglected his duty had he adopted any other course of proceeding.

(§ 6). It has been said, moreover, that, instead of visiting her personally, he ought to have instructed some local practitioner at

[1] See pages 28-30. [2] See page 33. [3] See page 34. [4] See page 38.

Brighton and at Worthing,[1] to visit Eva Sanger, which would have been a great saving of expense. Our answer is threefold. First—He expressly mentioned to the acting guardian and solicitor, in April, the subject of employing a local practitioner, but neither of them gave him any instructions. Secondly—He was the best judge of the matter. The course he pursued is by no means uncommon, and, under all the peculiar circumstances of the case, he was the most fitting person to take charge of the young patient, both in London and at the seaside. And, thirdly—Even if that course had been pursued, he must still have gone once to Worthing in April, and once to Brighton in August, to explain and give instructions to the local practitioner. It is scarcely too much to say, that at one period a single oversight, a single error or neglect might have launched the young patient into eternity. Thus two journeys at the very least would have been imperatively needed. But the Master of the Rolls would allow none to either place!

(§ 7). As to his charges for these journeys, it was in evidence before the Master of the Rolls, in Sanger *v.* Sanger, that, in the opinion of Sir WILLIAM FERGUSSON,[2] twenty-five guineas, or half-a-guinea per mile, was a fair, reasonable and moderate charge for a journey to Brighton; and he mentioned a case[3] in which an award made by himself and another surgeon to that effect was upheld by the Court of Queen's Bench. Dr. FOSTER REEVE[4] said that the charges for journeys are regulated according to distance and the station in life and means of the patient, and that the charge of half-a-guinea per mile is fair and reasonable, and ought to have been paid. Dr. COLLINS said that the charges were not improper or excessive; and Dr. BROWNING SMITH concurred in opinion with the other medical men.

(§ 8). It was also clearly proved, by uncontradicted affidavits before the chief clerk, that the ordinary fee paid to physicians for professional journeys was formerly calculated at the rate of one guinea per mile. Since the introduction of railways, however, so great a saving in point of time as well as expense has been effected in travelling, that the maximum fee now charged and allowed has been reduced to two-thirds of a guinea, or fourteen shillings per mile.

CASES BEFORE THE MASTER IN LUNACY.

The right of a physician to be remunerated at a mileage rate of two-thirds of a guinea was fully discussed and decided before Francis Barlow, Esq., one of the Masters in Lunacy, in 1866.

[1] *Lancet*, March 20th, 1869.
[2] See Affidavit in Appendix.
[3] See page 124, *post*.
[4] See Affidavit in Appendix.

In that case Dr. B——, an eminent pure physician, charged fifty guineas for seeing a patient in Bucks, being at the rate of one guinea per mile, or double the amount which Dr. Clark charged for his journeys to Worthing and Brighton. And Mr. T——, an eminent surgeon, received forty-five guineas for seeing the same patient at the same time and place; and a fee of two hundred guineas was allowed to a physician for bringing the patient from France to England.[1]

Bryant *v.* Johnson.

I recollect also this very singular case, which came before the full Court of Queen's Bench in the beginning of 1866. The plaintiff was a Fellow of the College of Surgeons and assistant-surgeon on the staff of one of our largest London hospitals. He sued the defendant, who was also a surgeon, to recover £200 and upwards for professional services rendered to the latter after he had sustained a railway accident which inflicted severe personal injuries. There were peculiar circumstances to justify the plaintiff in bringing the action, in apparent opposition to the well-known rule prevailing in the profession, that attendance upon a sick brother is a "labour of love," for which no fee or reward can be taken. The bill of particulars of Mr. Bryant contained the following items:—

1865.		£	s.	d.
April 22.	Visit to Brighton and attendance on Defendant (full fee, £35)[2]	26	5	0
May 28.	Visit to Brighton and attendance on Defendant	26	5	0
June 23.	Visit to Brighton and attendance on Defendant	26	5	0
July 28.	Visit to Brighton and attendance on Defendant	26	5	0

After the litigation had proceeded for a considerable length of time, it was arranged to refer the matter (by an order of the Court of Queen's Bench) to Sir William Fergusson and Thomas Tatum, Esq., the senior-surgeon of St. George's Hospital, who made an award to the effect that a charge of twenty-five guineas, which is at the rate of half-a-guinea per mile, was only a fair, moderate and reasonable charge for the plaintiff's attendance upon a professional brother at Brighton. An attempt was made to upset the award, but, after argument at the bar, the full Court of Queen's Bench confirmed the decision of the arbitrators.

Dr. Macloughlin's Case.

In the case of Dr. Macloughlin, a practising London physician, which has been quite recently decided in the Court of Chancery,

[1] Affidavit of William King, Esq.

[2] That is to say, fourteen shillings, or two-thirds of a guinea per mile.

I observe from the newspaper report,[1] that Vice-Chancellor Sir W. M. James allowed to Dr. Macloughlin a fee of fifty guineas for a journey to Ryde, to visit the late General da Pontes, in the spring of 1868. I shall refer again[2] to the considerate language used by that learned judge in speaking of the medical profession, which is in marked contrast with the tone of thought displayed by the Master of the Rolls in the case of Sanger *v.* Sanger.

(§ 9). Now, without attempting to place him upon a level with some of the eminent physicians and surgeons I have named, I am prepared to say that Dr. Clark's charges, at the minimum rate of half-a-guinea per mile, are not unreasonable under the particular circumstances of the case of Eva Sanger. No medical man can fail to observe with regret the great conflict that exists upon this subject between the opinions of some of our highest legal authorities and those of Lord Romilly. Seeing that, in many instances, he must rely only upon the fluctuating discretion of individual judges, every practitioner may well desire, before embarking in litigation, that some Minerva should guide his faltering steps, and say to him, as she did to Diomed of old—

> ——— "From mortal mists I purge thy eyes,
> And set to view the warring Deities."
> *Pope's Homer's Iliad*, book v., l. 164, 165.

(§ 10). In concluding this branch of my inquiry, I would repeat that, when the child was at Worthing, her life was in great peril. At a later period, when she went to Brighton, many of the dangerous symptoms had subsided; but the disease was still in existence, and she still required the most watchful care. I think that Dr. Clark was the best judge whether she required his attendance or not, and that a great mistake was committed by the learned equity judge, in disallowing his charges for the visits to the sea-side. Upon this subject I would quote the following passages from one of the leading medical journals:—

> "Upon what grounds, we should wish to learn, would that learned judge have disallowed altogether the charges for the visits to the sea-side? It is admitted that those visits were paid, and it was not proved that they were unnecessary; on the contrary, we assume that they were really required. It is no uncommon circumstance for the medical attendant in London to make such visits, and he is of all persons the most fitting to conduct a case which has been under his care from the commencement to its conclusion."

(§ 11). The editor of that journal need not have "assumed" only that "the visits were really required." In truth, besides Dr. Clark's own testimony, there was the sworn evidence of other physicians. One of them was a man of no less eminence than Sir William Jenner, who said that "the journeys were not too

[1] Irvine *v.* Sullivan, *Standard*, 28th July, 1869. [2] See pp. 146, 147.

frequent; " but, on the contrary, he was deliberately of opinion that Eva Sanger required constant attention and care, and the guardians never ventured to adduce one single tittle of evidence to the contrary.

(§ 12). It is this portion of his case that opens up some of the very serious questions which Dr. Clark hoped the judgment of the Master of the Rolls would assist in solving. Being left in charge of a young, unprotected ward of court, with the full assent of his lordship's chief clerk, was it his duty to visit her whilst she was at the sea-side, or not? Was he bound on each occasion to ask for any express verbal or written authority from the guardians of the child? And if they refused to sanction or even prohibited the visits, was he not still bound professionally and morally to see his young patient, and afterwards report the conduct of her guardians to the Master of the Rolls, even at the risk of having his charges disallowed? Or would he have acted consistently with his duty as her medical attendant, or even as a good citizen, if he had then withdrawn from the case and abandoned the child to her fate? And if the young ward had been so left, and a relapse had occurred, and her death ensued for want of medical aid, in what way could he have vindicated his conduct to the Court of Chancery? And who would have been held responsible for such death?

CHAPTER XIV.

§ 1. ITEM OF FORTY GUINEAS.—§ 2. SILLY MISTAKE OF THE "DAILY NEWS."—§ 3. DISTRACTED STATE OF THE FAMILY.—§ 4. UNPROTECTED CONDITION OF THE CHILD—IS A PHYSICIAN TO ACT AS A GOOD CITIZEN OR NOT?—§ 5. EVIDENCE FROM DEPOSITIONS AND LETTERS — LORD ROMILLY'S PERMISSIVE ORDER IN FAVOUR OF THE MOTHER —MR. SERJEANT ATKINSON'S WARNING LETTER OF MAY 30TH, ABOUT DISMISSAL.—§ 6. AMOUNT OF TROUBLE IMPLIED IN THE CHARGE.—§§ 7, 8. SUITABLE REMARKS ON LORD ROMILLY'S LIBERAL OFFER TO "GIVE HIM SOMETHING."—§ 9. QUOTATION FROM A LEADING MEDICAL JOURNAL.—§ 10. EXTRA-PROFESSIONAL CHARGES ALLOWED IN "BRYANT *v.* JOHNSON."—§ 11. PROTEST AGAINST THE WRONGFUL DISALLOWANCE OF THE ITEM.

"I should have disallowed the whole of the forty guineas—the general lump sum at the end; though I might have given him something for the special arrangement by which it was required that the mother should be allowed to see the child."—LORD ROMILLY'S *Judgment in Sanger* v. *Sanger.*

"Dr. Clark's address is He will, of course, be glad to afford you any information upon application on the part of Mrs. Sanger."—*Messrs. Godwin and Pickett to Messrs. Sweeting and Lydall*, March 24, 1865.

"It was your duty to communicate to us the opinion of yourself and Dr. Jenner; and had you not done so, you would, in all probability, have been desired to cease your attendance upon her (Eva Sanger)."—*Mr. Serjeant Atkinson to Dr. Clark*, May 30, 1865.

(§ 1). Very unfounded clamours were raised in various quarters against "the final item of forty guineas" which Dr. Clark charged for extra professional services of a grave and onerous character, he had rendered as medical attendant of the younger ward of court during nine months—from March to December, 1865. The particulars are set forth in a preceding chapter.[1]

(§ 2). Following the view adopted by Lord Romilly, even the able and candid editor of one of the medical journals [2] was so deceived, that he spoke of that item as if it admitted of no justification. Moreover, the reckless stupidity or the malice of the editor of a daily newspaper, in which the anonymous attacks

[1] See pp. 57, 58, 59. [2] *Lancet*, March 20.

appeared,[1] was displayed in a leading article alleging that Dr. Clark claimed forty guineas for merely corresponding with the guardians about the amount of his professional "charges" for the journeys to Worthing and Brighton, "when demurred to!" Thus, in order to blacken his name and character, one of his opponents was ready to propagate the most silly falsehoods. The case had excited so much public attention, that he could not afford to treat even such an idle but scandalous accusation with silent indifference. Accordingly, Dr. Clark addressed a letter to the editor of the *Daily News* on the subject; but some days elapsed before he could induce him, in a grudging spirit, to contradict the preposterous statement in an obscure part of his journal. It is quite possible, therefore, that in some quarters the unfounded assertion was believed, and may have been productive of some mischief.

(§ 3). But how stand the facts? I shall show that the forty guineas formed only a fair and reasonable recompense for services that were both necessary and useful, although, fortunately, medical men are rarely expected to fulfil such extra professional duties. Even at the risk of repeating statements already made, I must remind my reader of the peculiar position in which the Doctor was placed. I have observed that the schoolmistress and the guardians declined all personal responsibility. From beginning to end they either obstructed him in the discharge of his duty, or left him to act according to his own sense of responsibility. If he applied to the schoolmistress she only referred him to her friend Mr. Godwin. On his going to that gentleman he was told that it was not usual for solicitors to interfere in such matters. If he wrote to the acting guardian, Mr. Thomas Sanger, he simply forwarded the letter to Mr. Godwin, and he had no reply.[2] Or if he had called on Mr. Sanger he would have received from him no support or instructions; but most probably he would have said that "it was not his business."[3] And if he appealed to the co-guardian, Mr. Serjeant Atkinson, all that could possibly be learned from him was that he had "no instructions or permission to give."[4] Moreover, to make the matter worse and to aggravate his difficulties, Dr. Clark found that some of the numerous parties were jealous of, and assigned sordid motives to, each other. In fact, he became the sole available medium of communication between them. Yet, of course, he was never guilty of the folly of thinking that he could ever succeed in making every one of them satisfied with every part of his conduct.

(§ 4). Now when the persons having the custody and care of a ward of court, who is dangerously ill, will give no directions and

[1] *Daily News*, March 17, 1869.
[2] See page 34.
[3] See page 24.
[4] See page 55.

acquainted from time to time with the state of her child's health. undertake no responsibility on her behalf, and when the medical man is left, as Dr. Clark was, to act without instructions, I am of opinion that it would not be consistent with his calling, or his duty "as a good citizen," to abandon the sick child to her fate. On the contrary, he ought, I think, to attend her with increased zeal and assiduity, and at the same time, in order to relieve himself from legal responsibility, *it would plainly become necessary to make known through the proper channels, all that he does, and all that transpires in relation to his attendance upon such child.*[1] In this spirit, and with these views, Dr. Clark shaped his course of conduct as the medical attendant of Eva Sanger.

(§ 5). It would be a great mistake, however, to conclude, as Lord Romilly seems to have done, that Dr. Clark had no authority, either express or implied, from some of the motley group of individuals who professed to feel a deep interest in the bodily health or the property of the child. At his first interview with the acting guardian, on the 23rd March, 1865,[2] the latter requested—like some other thrifty and suspicious individuals who want everything to be in writing—that an explanatory letter should be sent to him respecting the illness of his niece, and Dr. Clark wrote one accordingly. On the 24th of March,[3] Messrs. Godwin and Pickett addressed a letter to Messrs. Sweeting and Lydall, saying "*the guardians feel their position with regard to the mother of the invalid one of extreme delicacy;*" and the concluding words were—"*the guardians will be glad to facilitate your obtaining information, should you require it.*" Without waiting for a reply, they wrote another letter[4] the same day, containing the passage I have quoted at the head of this chapter, placing the solicitors of the mother in direct communication with him :—

"Dr. Clark's address is No. 3, St. Mark's Square, Gloucester Gate, Regent's Park, as we believe Mr. Sweeting knows. He will, of course, be glad to afford you any information, upon application on the part of Mr. Sanger."

Again, it must not be forgotten that he was expressly empowered, by the order of Lord Romilly himself,[5] to accompany the mother when she visited her sick daughter; and, from what passed at the private conference between Mr. Hume (the chief clerk) and himself, when that order was made, and the solicitors on both sides were excluded from the room,[6] he could not doubt that it would be a very important part of his duty to make the mother

[1] See Introduction, page x. [2] See page 24. [3] MS. Correspondence, No. 3.
[4] MS. Correspondence, No. 4. [5] See pp. 26, 27.
[6] See page 27.

Accordingly, he had to correspond with Mrs. Sanger daily whilst the life of her child was in peril, and very frequently afterwards. Still further, let me call attention once more to the remarkable language used by Mr. Serjeant Atkinson in his letter of May 30th,[1] when the schoolmistress had taken offence at his communicating to the guardians the opinions entertained by Sir William Jenner and himself. The words were :—

"I am sorry to hear that there has been any misunderstanding in the matter. *It was your duty to communicate to us the opinion of yourself and Dr. Jenner, and had you not done so you would in all probability have been desired to cease your attendance upon her.*"

I could cite other passages to the same effect, but I think I have said enough to prove that, quite irrespectively of his legal obligations as a physician, and moral responsibilities "as a citizen," he was required, when needful, to see and to communicate with the guardians and their solicitors, and with the mother and her solicitors. If he had failed to do so, the learned serjeant has plainly intimated what would have been the result :—"*You would, in all probability, have been desired to cease your attendance upon Eva Sanger.*"

(§ 6). The trouble thus cast upon him was of no light kind. It entailed frequent visits to various parts of London, and much correspondence, and a large portion of his time was necessarily occupied, as was shown by the evidence used before the chief clerk. He had consultations and interviews with Sir William Jenner, Mr. Thomas Sanger, Mr. Serjeant Atkinson, Mr. Godwin, Messrs. Sweeting and Lydall, and Mrs. Sanger.[2] Besides which, it must be remembered that the responsible and even painful duty was specially imposed upon him, *by the Court*, of accompanying the latter on two occasions to St. John's Wood, to visit her daughter, who was believed to be in a dying state.

(§ 7). With respect to the latter visits I should mention that Dr. Clark only became acquainted with Mrs. Sanger through the Chancery suit of "Sanger *v.* Sanger." Considering the peculiar nature of the duty which the order of Lord Romilly imposed upon him, I own that I feel unable to comment upon the language held by his lordship in reference to those visits in any tone that would be consistent with the deep feelings of respect I entertain for his high judicial office. His lordship said :—

"I should have reduced the ordinary attendances from time to time, *though I might have given him something* for the special arrangement by which it was required that the mother should be allowed to see her child."

[1] Page 32.

[2] For full particulars, see "Exhibit Z," set forth at pp. 57, 58, 59.

Now, considering that Dr. Clark acted under the special order of Lord Romilly himself, and for that purpose at least he was "an officer of the court," that he had on each occasion to confer with the child as well as the mother before the interviews could take place, and that he had to be present for so long a time as the mother might think fit, and remembering also the irksome and harassing nature of the task itself, he is quite unable to appreciate the generous spirit which induced Lord Romilly to say that he "*might have given him something*" for performing such services.

(§ 8). Believing that he did his duty as a physician, and could claim proper remuneration by the statute laws of his country, it would not have been consistent with the customs of his profession, or congenial with his own feelings to accept anything as a "gift" from the Master of the Rolls or his clerk, which he could lawfully demand as a right.

Quidquid id est, timeo Danaos et dona ferentes.[1]

Dr. Clark certainly did imagine that the Master of the Rolls was bound to render to him, and to all other humble individuals, the simple justice of taking care that they are paid for what they have done in obedience to his own mandates. Is it, however, the fact, that an equity judge can employ a physician to perform specific functions for the benefit of an infant ward of Chancery, and yet retain a discretionary power, after the work has been finished, of saying whether the physician shall receive something or nothing for his pains? And if, in a spirit of beneficence, he should think it right to "give something," is it seemly or usual that he should make himself the sole judge of what that "something" shall be? By virtue of the delegated jurisdiction derived from the Crown as *parens patriæ*,[2] the Court of Chancery claims to exercise supreme power over the person and the property of each orphan ward of court. But is an equity judge allowed to say in effect to the physician he employs—"I might give you something for what you have done under my order, if I thought fit! I might generously make you a present out of the money which the law places under my control, belonging to this orphan ward, whose life you say you have saved; but I cannot be compelled to pay you. I will disallow the whole of the forty guineas, and you shall get nothing for your trouble." Gracious Heavens! is that what is generally understood to be "equity" as administered by the High Court of Chancery in England?

(§ 9). Speaking of Lord Romilly's judgment in reference to this item of forty guineas, one of the medical journals writes in the following terms:—

"Upon what grounds, we ask, would the Master of the Rolls have disallowed entirely the charges for correspondence, consultations and interview

[1] *Æneid*, lib. ii., l. 49. [2] See page 10.

with other parties interested? The learned judge certainly did not take the example of his own profession as his guide. Do lawyers write letters, hold consultations, have interviews with parties interested, without fee or reward? If this be the fact, we request, in legal phraseology, to be furnished with the precedent. There is no such precedent. Neither the written nor the unwritten law would sanction it. Westminster Hall and Lincoln's Inn would be in a ferment if such a doctrine should be allowed. Why is the medical the only one of the learned professions debarred from making fair and reasonable charges for services so rendered?"[1]

(§ 10). A more cogent reason, however, can be given why this item should have been allowed by the Court of Chancery. There is high judicial authority for saying that such extra charges can lawfully be claimed by medical men in exceptional cases like Eva Sanger's. In the case of BRYANT *v.* JOHNSON,[2] one surgeon sued another surgeon for professional services, and the bill of particulars of the plaintiff contained the following items:—

In the Queen's Bench.

BRYANT *v.* JOHNSON.

Particulars of Plaintiff's Claim.

1865.

March 29.—Consultation with Mr. Becke, in action Johnson *v.* S. W. Railway Company (nearly two hours) .
April 3.—Consultation with Mr. Becke (half an hour) .
„ 6.—The like
„ 26.—The like (over hour and a half)
May 9.—Detailed report of case from the beginning for counsel
„ 25.—Answering long list of questions, with opinions for counsel
„ 29.—Examining papers containing medical opinions for Mr. Becke, with advice
June 14.—Consultation with Mr. Becke (about one hour) .
„ 24.—Report of case from April 26th to Mr. Becke .
July 12.—Consultation with Mr. Becke
„ 19.—Ditto ditto
Letter and report to Mr. Becke
„ 22.—Long interview with Mr. Becke (from one and a half to two hours)
Making and swearing to affidavit
„ 23.—Reading over completely, advising, and answering questions to whole case; proof
Correspondence and short interview with others interested in case

(§ 11). The charges made by Mr. Bryant for conferences and letters were based on a much higher scale than Dr. Clark's in "Sanger *v.* Sanger," and amounted, with the journeys to Brighton, to more than £200. Being a consulting surgeon they were allowed

[1] *Medical Times and Gazette*, March 20, 1869. [2] See pp. 118, 119.

to him by the eminent medical arbitrators to whom the cause of Bryant *v.* Johnson was referred; and as I have already said, the award, after solemn argument, was confirmed by the Court of Queen's Bench. Fortified by such a decision of a court of the highest dignity and authority, I ask again, "upon what grounds would the Master of the Rolls have disallowed entirely the item of forty guineas?"

CHAPTER XV.

§§ 1-6. SINGULAR STATEMENT OF LORD ROMILLY AS TO MEDICAL CHARGES, AND THREATENED SPECIAL ARRANGEMENTS WITH MEDICAL MEN.—§ 7. WHO IS THE ANONYMOUS CORRESPONDENT OF THE "DAILY NEWS?"—§§ 8, 9. WHAT IS MEANT BY THE PHRASE "EFFECTUAL PROTECTION OF THE COURT OF CHANCERY?"—WHAT GOOD WAS IT TO EVA SANGER?—§§ 10-12. RIGHTS AND DUTIES OF MEDICAL MEN—IN MEDICAL MATTERS THEY SHOULD BE FREE FROM DICTATION OR COERCION—THEY MUST GUIDE JUDGES INSTEAD OF BEING GUIDED BY THEM.—§ 13. OTHER STRANGE HALLUCINATIONS OF "ALTERA PARS."—§ 14. VINDICATION OF DR. CLARK'S CONDUCT IN NOT ABANDONING THE SICK CHILD UNTIL LAWFULLY DISMISSED.

"I must say that, if I adopted the view and the argument which Mr. Colt has been urging upon me this morning, the result would be that in all these cases of wards of court, where they are orphans, of which I have so many, it would depend on the physician exactly how much of the infant's estate he should think fit to take. He might attend as much or as little as he pleased, and charge very much what he pleased. I cannot accede to that view of the case. It would make it necessary—which would be exceedingly disagreeable to me—in such cases to make a special arrangement with every physician before any child could be allowed to have a medical attendant."—LORD ROMILLY'S *Judgment in Sanger* v. *Sanger*.

(§ 1). The words I have introduced as the heading of the present chapter are the concluding sentences of Lord Romilly's judgment. They exhibit pretty clearly the spirit in which that noble and learned lord is prepared to treat the members of the profession to which Dr. Clark belongs. They were spoken in reply to his junior counsel, whose arguments, showing the propriety and necessity of his continuing to visit the child whilst she remained ill, were quite conclusive and "without a flaw." In the first place, I must emphatically protest against the idea that any equity judge or his "chief clerk" can properly be allowed to fetter the freedom of action or the judgment of a physician by any "special arrangement" whatever. It would, indeed, be an evil day for the public as well as for the profession when Masters of the Rolls and their clerks began to dictate to medical men the mode of treatment they are to pursue, or the number of visits they are to pay, or to fix at discretion the

emoluments they are to receive when intrusted with the care of sick or dying orphans. The very notion of such a system is as unseemly as I believe it to be impracticable; the attempt to put it in force would be fraught with the most perilous consequences to the young patients; and, indeed, unless the suggestion had come to us from so high an authority, it would probably have excited only a broad smile of mingled incredulity and amazement.

(§ 2). Let us, however, proceed: "*It would depend,*" says the eminent judge, "*on the physician exactly how much of the infant's estate he should think fit to take. He might attend as much or as little as he pleased, and charge very much what he pleased.*" I can assure Lord Romilly that he is in error. The danger he apprehends is purely imaginary. But, in speaking of a profession which is quite as honourable as his own (although its emoluments are much smaller, and although none of its members have yet been raised to the peerage in this country),[1] I would respectfully ask why his lordship incautiously gave utterance to the thoughts and suspicions I have quoted, and which every day's experience must prove to be unfounded? Does he entertain the same unworthy belief as his clerk and the acting guardian and late schoolmistress of Eva Sanger, that physicians only practise their art in the hope of lucre? Has he found them actuated by mean, sordid, mercenary motives? Let us hear what a great authority[2] tells us on that subject:—

"Whether what Temple says be true, that physicians have had more learning than the other faculties, I will not stay to inquire; but I believe every man has found in physicians great liberality and dignity of sentiment, very prompt effusion of beneficence, and willingness to exert a lucrative art when there is no hope of lucre."

And does Lord Romilly seriously mean to insinuate that a physician, when intrusted with the perilous case of a young orphan

[1] "Sometimes the money rewards which attend success in the (medical) profession seem unduly large; but they are not as great as those at the bar, and the medical profession has not the dignities, the secure berths, the handsome pensions, and the peerages that await the eminent advocate towards the close of his career. No English physician has ever yet been made a peer—the baronetcy has been their highest reward. Yet, if science is honourable, these servants of it should be honoured. If 'charity is beautiful, there is daily beauty in their lives.' If 'love, obedience, troops of friends' testify to a youth of industry and a middle-age of usefulness, they have many claims to gratitude and recognition from the public and the State. If every poor patient cured for nothing during the last twenty years gave a shilling, the aggregate would make a splendid national testimonial to the medical benevolence of the age."—*Daily Telegraph*, March 17, 1869.

[2] Dr. Johnson's Life of Sir Samuel Garth, the eminent physician, and author of "The Dispensary."

child like Eva Sanger, would debase his noble vocation by calculating "*how much of the infant's estate he should take?* Dr. Clark would like to know—and every member of the profession has a right to know—upon what basis of facts and by what process of reasoning the noble and learned lord arrived at a conclusion at once so strange, so unjust, and so derogatory to the whole body of medical men in the United Kingdom. Again, as regards the particular case of Eva Sanger, it was proved by the Physician in Ordinary to the Queen,[1] and admitted by the opposing counsel in open court,[2] that his visits in London were *not too frequent.* I therefore respectfully protest against the supposition that any observation of that description was pertinent either to him or to his claim. And why, then, was it used?

(§ 3). Be this, however, as it may, I repeat that the danger is purely imaginary. On the one hand, his lordship must be perfectly well aware—unless, indeed, as the late Lord Justice Knight-Bruce once remarked, some short act of parliament, unknown to us all, has quite lately been passed to alter the law of England—that a physician is bound to use competent skill, and to attend his patient with care, attention and assiduity;[3] not, however, in the singular manner mentioned by Lord Romilly, "*as much or as little as he pleases,*" but as often as in the fair, honest, reasonable exercise of his own unfettered judgment he believes the necessities of his patient's case will require. His lordship must also know, that if he should neglect so to attend, and, in consequence of his inattention, death should ensue, or the health of the patient should be seriously injured, the physician may be subjected to all the pains and penalties of *mala praxis,* and thus be either mulcted in damages at law, or become amenable to a criminal prosecution.[4] On the other hand, if, through over-zeal or avarice, the physician should be prompted to exceed or abuse his professional duty and privilege by paying visits too frequently or in any other way, his lordship must be equally well aware that it is always within the power of the guardians of the child, or the equity judge, to remedy the evil by dismissing him directly, and appointing another medical practitioner to supply his place. Being thus kept within the strict path of duty by the law, as well as by the higher obligations arising from his own innate sense of honour and the dignity of his calling, how can it ever be said, that "*it would depend on the physician exactly how much of the infant's estate he should take?*"

(§ 4). Influenced by what I have ventured to call an imaginary danger, or, perhaps, unjustly suspecting the integrity of medical

[1] See page 109, and Affadavit in Appendix, No. 1, par. 5.

[2] See page 109. [3] See page 36. [4] See pages 37, 38.

men, the Master of the Rolls proceeded to utter what appears to be a threat against them in the following terms :—

"*I cannot accede to that view of the case. It would make it necessary—which would be exceedingly disagreeable to me—in such cases, to make a* SPECIAL ARRANGEMENT *with every physician before any child could be allowed to have a medical attendant.*"

It must be owned, that if such a proposal cannot be considered very dignified or edifying, it has at least the charm of novelty in its favour! A learned equity judge chaffering beforehand with a physician,—

"As market men for oxen, sheep or horse,"—

with respect to the fees to be paid for visiting a sick or dying ward of the High Court of Chancery. We must fancy a judge, avowing liberal ideas and principles, saying to the physician,—

"I'll give thrice so much
To any well-deserving friend;
But, in the way of bargain, mark ye me,
I'll cavil on the ninth part of a hair."
HENRY IV., *act* iii., *scene* 1.

If such a spectacle were skilfully handled, I think the scenic effect might become quite striking. Most assuredly the judge who, under such circumstances, obtained a great bargain—I beg pardon, a good economical "special arrangement," securing cheap medical attendance upon a rich orphan ward—might justly claim the same sort of eulogy as Mrs. Primrose, when dissuading the worthy Vicar of Wakefield from going to the country fair, so freely lavished upon one member of the family. "Our son Moses," said that excellent lady, "is a discreet boy; you know all our great bargains are of his purchasing. He always stands out and higgles, and actually tires them till he gets a bargain."[1]

(§ 5). Yet this is far too serious a subject for banter. It really raises a grave question. Does Lord Romilly wish to establish for "orphan wards," of whom he tells us he has "so many," a cheap uniform system of charges for medical attendance, by contract, at so much per visit or so much per head? And,

[1] "Vicar of Wakefield," chap. xii.—The gifted poet Oliver Goldsmith was sent to study physic at Edinburgh about 1752 or 1753, and attended the usual courses of lectures of the medical professors. Then he began his celebrated roaming career. After studying chemistry and anatomy for about a year at Leyden, he obtained the academical degree of Bachelor of Medicine either at Padua or at Louvaine. Upon his return from abroad he started in practice as a physician in Bankside, Southwark, and from thence he removed to the Temple or its neighbourhood. With what success he practised medicine we may judge from his own account: "*I had plenty of patients, but got no fees!*"—*Chalmers'* Biog. Dict.

if so, when he begins to frame his plan, will he deal with orphans individually? or reckon up the total number under his control, and adopt, as his model, the practice pursued at the Foundling, or in gaols, workhouses and orphan asylums?

(§ 6). Let me respectfully warn the noble and learned lord that it would not be prudent to stake his high reputation and his honoured name upon such a venture. Does he suppose that, because a bricklayer or builder is ready to send in beforehand a written estimate of the time and manual labour required for a given work, a physician can do likewise in such a case as Eva Sanger's? Even if the plan were practicable, can it be supposed that a physician would degrade the order to which he belongs to the level of a mechanical trade by allowing his discretion, his freedom of action, his knowledge, his skill, his experience, and, above all, his professional repute, to become the subject of "a special arrangement" or written contract, to be settled by a Mr. Marshall, or some other "chief clerk" in his lordship's chambers? And if such a thing could be done in the case of medical men, are there not more cogent reasons why the same system should be applied to the emoluments of that other honourable profession by means of which his lordship attained the high judicial dignity which he now sustains? And what will his lordship think of such a proposition?[1]

(§ 7). The new doctrines promulgated by Lord Romilly respecting medical charges have, however, found at least one advocate or apologist. The writer in the *Daily News*,[2] who,

[1] See Introduction, pp. xi., xii.

[2] I refer to two letters I have already mentioned, signed "Altera Pars," which appeared in the *Daily News* of March 20th and April 1st, 1869 (See p. 3). By the adoption of a fictitious signature the public were unable to judge of the *bona fides* of the writer, and the motives which prompted those envenomed attacks. I believe the author to have been Mr. JOHN CHESTER, of the equity bar, who held a brief for the guardians, and is stepson of Mr. Thomas Sanger, the acting guardian (See p. 90). My reasons are: (1) Mr. Chester, I am told, was law reporter at the Rolls Court for the *Daily News* (as well as for the *Morning Herald* and the *Standard*), and in that way only could have induced the editor of the former journal to open his columns to anonymous attacks upon a private individual. (2). The letters were evidently compiled by a lawyer, who, according to his own account, had "full knowledge of all the facts." No one suspects that Mr. Godwin or Mr. Smith wrote them. As to Mr. Serjeant Atkinson, I believe he would never stoop to attack Dr. Clark or any other person anonymously; and, indeed, to do him justice, I doubt whether he *could* concoct such a farrago of nonsense, if he tried. But, on the other hand, Mr. Chester (familiarly called "John" in some of the letters exhibited to Lord Romilly's clerk) appears to have mixed himself up, with more zeal than discretion, in the business from beginning to end. By way of example, I am told that he was one of the party when his stepfather, Mr. Thomas Sanger, committed the contempt of court, and exposed himself to the risk of imprison-

like a highwayman of old, assailed Dr. Clark under the cowardly shelter of a mask, tells us that the Master of the Rolls—

"*Is notably zealous for the interest of his wards;*"

a statement which I am quite ready to believe, notwithstanding the decision in "Sanger *v.* Sanger." But then follows the question —

"Is a doctor, when called to attend orphans or wards of Court who, in addition to the effectual protection of the Court of Chancery, have guardians and near relatives, entitled to consider himself an officer of the court, having full power to order the wards whither, and visit them when he pleases, or to continue his visits in defiance of the disapproval of those in charge of the patient?"

(§ 8). Now, in the first place, let us try to ascertain the precise meaning and value of that high-sounding phrase, "*the effectual protection of the Court of Chancery,*" as applied to an orphan ward like Eva Sanger. It may be supposed that the privilege must be of some value, seeing that it is the monopoly[1] of children of fortune. Many may also be led to infer that when, by the institution of a Chancery suit,[2] children become wards of court, it is the special duty of the equity judge, or of some official specially designated by him, to be watchful over their interests, and to take care that all guardians, "next friends,"

ment by taking the elder ward to the Channel Islands (See pp. 38, 39); and yet, strange to say, although a Chancery barrister and a law reporter, he did not know the project was illegal! (3). A passage is quoted in one of the letters from Dr. Clark's deposition, and some circumstances are mentioned which must, I think, have been taken from the briefs delivered to counsel; and Mr. Chester is the only one amongst them all who can be suspected of doing such a thing. (4). The letters contain "toadying" expressions when speaking of the Master of the Rolls and his chief clerk, which are intelligible enough as proceeding from the venal pen of a young barrister who reports and practises at the Rolls Court, and would always strive to stand well in the estimation of "my lord." (5). The meanness of the sentiments, the peculiarity of some of the expressions, the hollow parade of classical learning concerning Prometheus and the gods, and the levity of the style, are, I am informed, characteristic of the individual. (6). Mr. Chester has been twice asked by one of Dr. Clark's friends (See pp. 90, 91) whether he adopts or repudiates the letters, and he refuses to disclaim them. (7). Lastly, the writer himself tells us that they were not the production of either of the guardians of Eva Sanger. "*I trust,*" he says, "*the guardians and I will be enabled to bear meekly whatever condign punishment Dr. Clark is preparing for us.*" So let the question of authorship rest until Mr. Chester chooses to explain, or until the truth can be ascertained without his assistance; and in the meanwhile I will only say further, that, in expressing his readiness to "bear meekly condign punishment," "Altera Pars" has been forestalled by *Mawworm*, who, when called an idiot, "meekly" replies:—

"Ah! do despise me! I'm prouder for it; I *likes* to be despised!"
COLLEY CIBBER'S *Hypocrite, act* v. *scene* 1.

[1] See pp. 10, 11. [2] See pp. 11, 19.

tutors and others, faithfully perform the duties prescribed by the law in relation to the care, management, and education of the young wards.

(§ 9). I am sorry, however, to dispel the pleasing illusion! The Court of Chancery has no machinery fitted for such purposes. It is not in the habit of originating proceedings. Like the pendulum of a clock, it will not work until somebody sets it in motion. It never acts *ex proprio motu*, but waits until some grievance is specially brought forward and proved, before it attempts to grant redress or relief. No reports are made by guardians or next friends as to the condition of their wards. So that, in fact, until complaints are actually made, the judge never interferes or gives himself trouble in making inquiries as to the welfare of the several wards under his jurisdiction, or as to the conduct of their guardians, who, if they thought fit, might place an orphan boy of fortune at some establishment only one shade better than that which "Mr. and Mrs. Wackford Squeers" conducted at "Dotheboys' Hall," in Yorkshire or elsewhere: and yet, probably, the learned judge would hear nothing of the matter. Indeed, according to the information that has reached me, it is possible, even in this nineteenth century, and in spite of "the effectual protection of the court," that a state of things may exist to which the caustic language of Dryden would apply:—

> "When stern as tutors, and as uncles hard,
> We lash the pupil and defraud the ward."

Whenever such evils arise, who is there to call guardians to account? It seems the wrongs must remain undiscovered and unredressed, unless and until some benevolent individual specially investigates and drags them forth from obscurity, and brings them under the notice of the equity judge. The facts must then be proved, at very heavy expense, by strict legal testimony. The application must be made to the judge by a party to the original Chancery suit; or some bold, adventurous, humane individual must be found willing, at his own peril, to incur certain odium, disagreeable notoriety, and heavy costs, by assuming the character of "next friend," or what is called "amicus curiæ" in the technical language of the law. Even after all this has been done the learned judge, in the exercise of his discretion, may decide in favour of the guardians, or dismiss the application upon mere technical grounds. And then the unlucky applicant, being saddled with all the expenses, will bitterly regret that he ever indulged in the knight-errantry of coming forward to redress the wrongs of oppressed orphan wards of the High Court of Chancery.

(§ 10). This branch of the subject involves many points upon which, whether I give offence or not, it behoves me to speak in the plainest language. I therefore say, most deliberately, that, when treating a ward of Chancery, every medical man should be left to act freely and independently, according to his own judgment, and not under dictation or coercion on the part of a guardian or a schoolmistress, or even of the Master of the Rolls himself. If wrong is being done to an infant, he should be encouraged to make known the facts to a judge. Still further, I say that the only way in which Lord Romilly and the Court of Chancery could "effectually protect" Eva Sanger, when her life was in jeopardy, was to support and place confidence in her medical adviser, by compelling the guardians and the schoolmistress to obey his advice, and, if needful, removing them from office and censuring them severely for interfering with or obstructing him in the faithful discharge of his duty. To lay down any other doctrine would, in my opinion, be fatal, in many instances, to the patient. Few medical men would be ready to go through the anxiety and trouble Dr. Clark sustained for Eva Sanger.

(§ 11). To illustrate my meaning, let me suggest a few points which here naturally arise. I yield to none in the respect I feel for the holder of the high judicial office which Lord Romilly now so worthily fills. Yet I must always think that, in the exercise of his functions as a physician, Dr. Clark ought to be regarded morally, if not legally, as far beyond the control of his lordship. In such matters he is to guide the judge instead of being guided by him. Without any disrespect, therefore, Dr. Clark would most certainly have withdrawn from the case rather than have allowed Lord Romilly to question the soundness of his judgment, or interfere as to the smallest particular in the medical treatment or general management of his young patient. He would have considered such interference unwarrantable, and tantamount to a dismissal.

(§ 12). Freely admitting, therefore, that Lord Romilly "is notably zealous for the interest of his wards," of what possible use could his lordship's zeal have been to the little girl Eva Sanger if debarred from medical aid when lying on the bed of sickness? On the contrary, would it not be cruel irony, under such circumstances, to talk of the "effectual protection" of the Court of Chancery? In the memorable language of the late Lord Denman, would it not be "a delusion, a mockery, and a snare?"

(§ 13). Again, our anonymous letter-writer speaks of "guardians and near relatives," and of "those in charge" of Eva Sanger. Now, "the actions of men," we are told, "proceed from

their thoughts." *Acta exteriora indicant secreta interiora.* Taking into consideration the conduct he witnessed during the eleven months of his attendance, Dr. Clark would wish "Altera Pars" to explain to the public who, except himself, can truly be said to have been in *responsible "charge"* of the little girl throughout the critical period of her illness? Did the "guardians" undertake any responsibility on her behalf? Did the acts of the schoolmistress tend to promote or retard her recovery? Did she not co-operate with the acting guardian to prevent the removal of the child from the atmosphere of London into the country,[1] and afterwards boast that she thereby "saved a considerable sum?"[2] Did any "near relatives," except the acting guardian and the unhappy mother, make their appearance or even take the trouble to inquire concerning her?[3] Was any sympathy shown by the "next friend,"[4] through whose questionable kindness she obtained what only an equity lawyer would call the "effectual protection of the Court of Chancery?" Did the behaviour of any of the parties indicate that they felt for the unprotected ward the natural love of a parent towards a child? And of what earthly advantage could it have been to her to have "guardians and near relatives," and a schoolmistress, and a next friend, if all of them only evinced their zeal and their love by obstructing her medical adviser and neglecting his salutary advice? and who, when her health began to improve through his exertions, would scarcely speak one civil word, or treat him with common courtesy, but simply drove him into Chancery for his remuneration? May I not also ask *why* he was so treated?

(§ 14). Under such very peculiar circumstances, and with the possible consequences of *mala praxis*[5] before his eyes, Dr. Clark considered, that as the guardians would not liberate him by a formal dismissal, it was not a matter of choice, but of plain duty and necessity, that he should visit Eva Sanger, and see that she received proper attention. He had recommended, with the approval of Her Majesty's physician, that she should be taken from the London boarding-school to the pure, invigorating air of the seaside or the country. The guardians would not employ or sanction the employment of a local practitioner.[6] Believing her to be in an unsafe condition, Dr. Clark came to the conclusion, whether rightly or wrongly his brethren must judge, that if he

[1] See page 32.

[2] "You will recollect I did save a considerable sum by my refusal of the proposed residence at the 'farm-house,' in May last.—*(Mrs. Twigg to Mr. Godwin*, May 2, 1866, in Correspondence, No. 42.

[3] See page 25. [4] See page 25. [5] See pages 36, 39. [6] See page 117.

failed to visit her whilst she was in the country, he would grossly neglect his professional duty.

(§ 15). Deprived of all medical aid, the little girl might suddenly have died at Worthing or at Brighton. In that event, who would have been able to write the certificate for her burial, setting forth truly the cause of her death? Of course, none such could have been properly signed by any medical man on the spot who had never seen her, and could know nothing of her malady. Might it not have been necessary to hold a coroner's inquest? Was it not also possible that the jury, especially if he had been summoned before them as a witness, would have returned a verdict that the death of Eva Sanger was hastened, if not caused, by the want of proper medical aid? And, if so, would any of the parties have become liable to penal consequences? And might it not have been said that, by forgetting the *dictum* of the Scotch judge as to the duty of "a good citizen," he had also made himself, morally if not legally, a *particeps criminis?*

(§ 16). In answer, then, to all anonymous letter-writers, I deliberately say, that when the lives of orphan wards of court are at stake, it may often be the duty of medical men to recommend (which ought to be deemed equivalent to an order) the removal of their patients to the seaside, and to visit them when they think necessary, and to continue their visits even "in defiance of the disapproval" of those in charge of the patients. In some cases, indeed, it might be proper to adopt a more stringent course by invoking the summary aid of the law itself against guardians or schoolmistresses who disobey their advice or wilfully obstruct them in the discharge of their functions. The preservation of human life is the imperious, nay, sacred duty of the physician; the protection of property only is, I must presume, the special business of the Court of Chancery; and the preservation and protection of both life and property should be the aim of all civilized governments.

(§ 17). Lastly, let me say that a physician would, indeed, be deficient in moral courage who, in a case of great emergency like Eva Sanger's, would allow himself to be pestered with guardians and schoolmistresses. His office is not to consult their feelings, but resolutely to do his duty. Above all things, it is required that he should be bold, unflinching and independent, even at the sacrifice of his own interests. Holding these sentiments, Dr. Clark owns that the only circumstance he laments in his own conduct in this business of Eva Sanger is, that when he found himself hindered and insulted by Mr. Thomas Sanger and Mrs. Twigg, he omitted to make a special application to the Master of the Rolls. Their behaviour would thus have been

brought before the Court of Chancery and the public. Considering, however, the hazardous nature of the experiment,[1] and the views recently promulgated by Lord Romilly in Sanger *v.* Sanger, it is very possible that his lordship would have supported the guardians, and dismissed the Doctor's application with costs. But then he would have exposed the vicious system to the public gaze, and saved himself from the petty, spiteful, malignant attacks to which he has since been exposed.

[1] See pages 2-5, 87, 88, 90, 91.

CHAPTER XVI.

§§ 1-3. Unsatisfactory state of the law in relation to Medical Charges and Orphan Wards.—§ 4. General Medical Council.—§§ 5, 6. Appointment of Select Parliamentary Committee, or Royal Commission, proposed.—§ 7. Criteria, or tests of Medical charges. —§§ 8-11. Legal qualifications and professional status of the Practitioner.—§§ 12, 13. Nature of the malady of the Patient.—§§ 14, 15. Distance between the residence of the Medical attendant and that of the Patient.—§§ 16-18. Extent of work done and time occupied.—§§ 19-21. Value of services rendered. — §§ 22-26. Pecuniary resources of Patients.—§ 27. Special circumstances.—§§ 28-40. Suggested Tribunal for Medical Accounts—Appointment of Medical Assessors or Taxing Masters recommended.— §§ 41-49. Suggestions for amending the law in relation to Wards of Chancery.

"In matters requiring fine medical or scientific knowledge, the practice already found to work well in another department of legal procedure should be adopted; I mean the appointment of assessors to the court."—Professor J. Russell Reynolds' *Lumleian Lectures.*[1]

"For the public interest, and in view of these difficulties, it might be well if such cases as the present led to a distinct reform of our whole system of medical fees."—*Daily Telegraph*, March 17th, 1869.

"The cases under consideration demonstrate, 'trumpet-tongued,' the propriety of the establishment of some medical tribunal to which such questions should be submitted."—*Medical Times and Gazette*, March 20, 1869.

"A County Court judge in Lincolnshire, after hearing the other day several cases of disputed claims for medical attendance, said 'he wished there was a taxing officer for medical accounts; it would save him a deal of trouble.'"—*Lancet*, July 24th, 1869.

(§ 1). It may be said by some of the profession, that notwithstanding the length of the discussion that has been carried on in relation to the case of Sanger *v.* Sanger, no practical or beneficial result has been arrived at. No rule of conduct and no scale of charges have been established for guidance in like cases hereafter. Undoubtedly the fact is so, and most bitterly do I lament it.

(§ 2). Even the modicum of light afforded by the decisions of

[1] *Lancet*, 1867.

the Court of Exchequer in Gibbon *v.* Budd,[1] and the Court of Queen's Bench in Bryant *v.* Johnson,[2] and Lord Romilly's former decision in the case of Clark *v.* Nicholls,[3] has been extinguished by the recent judgment in Sanger *v.* Sanger. Instead of establishing some guiding rules or principles, the Master of the Rolls has left the question in greater darkness and obscurity than ever. In short, after an enormous expenditure of time and of money, Dr. Clark has gained nothing that can be of any service either to the profession or himself. The contest has been severe and sharp, but it has decided nothing.

(§ 3). I am afraid I must add, that the only sure result will be that medical men will rather be discouraged than encouraged in doing their duty in perilous cases. It is not always consistent with the proper exercise of their functions to make things pleasant and agreeable to those who have charge of a patient. They are often required to do quite the contrary. In such emergencies they will not, I fear, be prepared in future to act fearlessly and independently as Dr. Clark did in Eva Sanger's case—especially now that they have Lord Romilly's judgment in their hands, and see that their labours, however zealous and successful, may only expose them to the charge of being "devourers of orphans' estates." They will be paralysed by the thought, that after acting according to the best of their judgment. they may be held up by the Court of Chancery to public opprobrium, and not only left without any proper remuneration for all their toil and anxiety, but actually exposed to the derision of the public through the venomous attacks, the gross misrepresentations, and the distorted statements of some anonymous law reporter or ignorant, scurrilous letter-writer in a newspaper.

(§ 4.) His brethren will be apt to reprehend him gently because, in holding out their disastrous situation in such cases, he suggests no plan for a remedy. The truth is, he is so diffident of his own abilities, that he almost trembles at the thought of attempting to obtrude his crude, ill-digested ideas upon subjects of such magnitude and vital importance both to the profession and the public. Unfortunately, the "General Medical Council," established under "The Medical Act" (1858), is not at liberty to entertain such grave questions. The powers of the council, it appears, are chiefly confined to registration and medical education. It has no power to control the relations either between members of the profession or between them and the Government; nor has it any means of regulating or interfering with, in any way, the remuneration of the profession, whether for private or public services.[4]

[1] See page 101. [2] See pages 118-126. [3] See pages 106-108.

[4] Report of the Committee on Amendment of the Medical Acts, presented to the "General Medical Council."—See *Lancet*, July 24th, 1869.

(§ 5). The best course, therefore, would probably be to endeavour, in the coming session of Parliament, to obtain either the appointment of a select parliamentary committee or (which, I think, would be far better) to induce the Government to advise her Majesty to issue a Royal Commission, consisting of medical men, learned lawyers and eminent members of the Legislature, for the express purpose of submitting to careful investigation the whole subject of medical fees, as well as the various questions relating to the custody, care and management of wards of court, to which I shall presently advert.

(§ 6). In the meanwhile, with the view of stimulating further inquiry, I shall venture to offer to the candid consideration of the profession, the opinions I have been able to form upon the difficult medico-legal questions raised but not solved by the recent judgment of the Master of the Rolls. I think no one can doubt that, however strongly medical men may dislike litigation, exceptional cases and circumstances must sometimes arise to render a recourse to law absolutely unavoidable. Such, I think, were the cases I have quoted of Gibbon *v.* Budd, Clark *v.* Nicholls, Bryant *v.* Johnson, and the more recent case of Dr. Macloughlin.[1] And Dr. Clark's claim as medical attendant of Eva Sanger was also clearly one in which an application to the Court of Chancery was not only allowable, but a positive necessity. In order to explain the views I entertain, I shall endeavour to propose for consideration,—

I. Certain CRITERIA or TESTS which could, I think, be safely applied in all cases to medical charges.

II. To point out a mode in which an *adequate and satisfactory tribunal* for settling medical accounts might be created, without seriously disturbing the existing machinery of our courts of law and equity.

III. To suggest some of the evils which seem to me to require the intervention of the Legislature, in relation to the reciprocal rights, duties and responsibilities of guardians, next friends, tutors and medical men to whom the charge of wards of Chancery may hereafter be confided.

I.—CRITERIA OR TESTS OF MEDICAL CHARGES.

(§ 7). With regard to the criteria or tests to be applied to medical charges, I conceive that in all cases and under all circumstances, the fees of physicians, surgeons and apothecaries can

[1] See page 119.

only be properly regulated by taking into consideration the following circumstances :—

(*a*). The legal qualifications and professional status of the practitioner.

(*b*). The nature of the malady of the patient.

(*c*). The distance between the residence of the medical attendant and that of the patient.

(*d*). The extent of the work done and the time occupied in doing it.

(*e*). The value of the services rendered.

(*f*). The pecuniary resources and station in life of the patient.

(*g*). Any special or peculiar circumstances increasing the duties and augmenting the responsibility of the medical attendant.

Under each of these heads, I shall offer a few explanatory remarks or illustrations.

(*a*). The Legal Qualifications and Professional Status of the Practitioner.

(§ 8). We have seen that the popular notion as to the inability of a physician to recover his fees is erroneous.[1] A learned Queen's Counsel, whose work I have previously cited, thus alludes to the emoluments of medical men :—

"Every regular practitioner is entitled to a fair remuneration for his services to his patients, according to his station in life, and the expense and exertion by which he has rendered himself competent to his profession."[2]

And Lord Kenyon, in reference to a surgeon's claim[3] that came before him in 1799, observed that "professional men are entitled to a fair and liberal compensation for their services." We have seen, however, that the law of England recognizes only three orders of the medical profession,—physicians, surgeons, and apothecaries. And that by the "Medical Act" (1858), every *registered* physician, surgeon and apothecary is entitled, *according to his qualification or qualifications*, to recover in any court of law, reasonable charges for his professional aid.[4]

(§ 9). I have shown[5] that although the great majority of the members of the medical profession avowedly practise both medicine and surgery, and are therefore popularly styled "general practitioners," yet the law of England does not recognize them at

[1] See pages 99, 101, 102.

[2] Willcock's *Laws of the Medical Profession*, p. 111.

[3] Tuson (Surgeon) *v.* Balting, 3 Esp. N. P., p. 192.

[4] See pages 100, 101. [5] See pages 98, 102.

all *eo nomine!*[1] Nor are they bound to adopt any particular tariff of charges. The state of the law is simply this:—When a medical man belonging to either of the three orders of the profession seeks to enforce payment of his fees, he must sue "*according to his qualification or qualifications*," and the sum claimed must be "reasonable" in amount. So that if his claim be for remuneration for *medical* services, he must show himself to be a registered physician or apothecary; if for *surgical* services, he must in like manner be a registered surgeon. And, if he has rendered both *medical and surgical* aid to his patient, he must be registered in both branches of the profession; that is to say, either as physician and surgeon, or as a surgeon and apothecary: and then of course the "reasonable" fees to be allowed to him would have to be distinguished and calculated accordingly.

(§ 10). It is necessary to remember that, in the eye of the law, there is no distinction of rank or degree as between practitioners belonging to the same order of the profession. Although the several members of each of the orders differ widely *inter se* in the character of their practice and the emoluments they receive, they all have precisely the same *legal* rights with respect to fees and otherwise.[2] In fact, all physicians stand upon an equal *legal* footing with each other; so do all surgeons, and so also do all apothecaries. Yet, in actual practice, we find that medical men are commonly divided into several classes or sections, and are known by different designations,—such as the pure or consulting physician; the pure or consulting surgeon; the physician and surgeon; the surgeon and apothecary; and the pure apothecary. As the members of the bar are, I believe, governed by rules or usages, partly written and partly unwritten, so likewise the peculiar avocations of physicians, surgeons and apothecaries; their relative positions *inter se;* their modes of intercourse with their patients and each other by way of consultation and otherwise;

[1] See page 102.

[2] "The large fees paid to our great physicians and surgeons are not obtained by reason of their legal status being superior to that of their brethren of the same order, but simply on account of their high reputation and great eminence. 'A medical man of great eminence,' says Mr. Willcock, 'may be considered reasonably entitled to a larger recompense than one who has not equal practice, after it has become publicly understood that he expects a larger fee.' *(Laws of the Med. Prof.,* p. 111). Upon this subject the able writer from whom I have borrowed several valuable remarks, observes that 'if the large fees obtained by first-rate physicians do sometimes appear very high in proportion to the time and trouble absorbed in each visit, we must remember, as a set-off, the education, the training time, and long earlier years of the poorly-paid young surgeon, and the gratuitous or all but gratuitous services of these eminent men, who proportion their fees to the poverty or comparative poverty of their patients.'"—*Daily Telegraph*, March 17th, 1869.

and, in fact, the honour, dignity, and legal rights of their profession are distinguished, regulated and preserved by certain established rules of practice or etiquette, which are partly written and partly unwritten. Some of the rules derive their efficacy from custom only; some from the regulations of the universities, colleges and licensing bodies to which the different practitioners belong; and some are defined by special statutory enactments which from time to time have been promulgated by the Legislature in relation to each particular order of the profession.

(§ 11). As regards the fees and emoluments of medical men, I have stated that the greatest diversity prevails.[1] Neither of the three orders has ever yet adopted or attempted to adopt any uniform tariff of charges; nor is it, I repeat, desirable, even if it were possible in medical practice, to frame a hard, undeviating general rule that would be applicable to all cases and all classes of patients.[2] The law simply enables practitioners belonging to either of the three orders to make and recover "fair," "liberal," and "reasonable" charges for their professional aid; and when we come to ascertain the precise meaning of those phrases, we shall find that the "golden rule"[3] is to deal with each case upon its own merits, by estimating the remuneration of the medical man according to the nature of his qualification as physician, surgeon, or apothecary, the value of the services rendered, the ability of the patient to pay, and all other attendant circumstances to which I have already adverted, and now proceed shortly to discuss.

(*b*). The Nature of the Malady of the Patient.

(§ 12). Even an individual so ignorant and so flippant as the anonymous correspondent of the *Daily News*[4] can see that the nature of the malady of the patient must be an important ingredient in estimating the remuneration of the medical practitioner. He asked the following questions:—

"Are such practitioners (physicians and surgeons), when called in to Polly's measles or Tommy's whooping-cough, entitled to charge the quiverful and luckless Paterfamilias one guinea a visit? Can the public in that case afford to maintain so expensive a dignitary as the family physician?"

[1] See page 104.

[2] An affidavit was sworn on my behalf in Sanger *v.* Sanger, by C. A. Mornewick, Esq., landscape painter, which contained the following passage:—"It certainly appears to me that arrangements for establishing uniformity of practice and charges would be degrading to medical men, and injurious to their patients, by introducing the vicious, levelling system of tactics prevailing in trades unions, to which all professional men, excepting those of inferior skill and intelligence, must naturally feel the greatest antipathy." —*Affidavit of Mr. Mornewick, sworn 16th, and filed 19th December*, 1868, par. 8.

[3] See page 106. [4] Letter of "Altera Pars," *Daily News*, March 20, 1869.

Now the plain answer to these nonsensical questions is,[1] that although a guinea is in most cases the normal fee of the physician, it may not be so in all; nor does it follow that he will receive that sum each time he sees or visits his patient.[2] Let me add, that if "Altera Pars" is really the stepson of the acting guardian,[3] he must be a connection by marriage of Eva Sanger. And if this be so, I venture to say that the use of such phrases as "Polly's measles" and "Tommy's whooping-cough," when referring to the frightful malady which threatened the life of that little girl is very unfeeling; it betrays a levity of thought and expression—a sordid view of social duties and relations—that would appear to be positively shocking.

(§ 13). In fact, the alarming nature of the illness of Eva Sanger, and the success which attended Dr. Clark's efforts on her behalf, formed some of the reasons which induced his friends and myself to think that, instead of making a reduction, he ought to charge the full fees allowed to him by law as a duly qualified and duly registered physician. Besides which, as I have already stated,[4] Mr. Serjeant Atkinson had previously told him that, in his opinion, her recovery was something like a resurrection; that no money could compensate him for his services; and that the family were rolling in wealth.

(*c*). The Distance between the Residence of the Medical Attendant and that of the Patient.

(§ 14). It is very obvious that when a medical practitioner incurs the loss of time and perhaps of money in going from his own home to visit a patient, the fee payable should be calculated at a higher rate, and according to the distance he is required to travel and the time expended. The principle is certainly a sound one, although the application of it may vary occasionally in different localities, and depend, more or less, upon circumstances. In the recent case of Hamilton (surgeon) *v.* Penlington, tried at the Liverpool County Court, the patient resided a few miles out of Liverpool, and the surgeon's charge for each ordinary visit was one guinea; and it was proved that the custom amongst the medical gentlemen was to double the fees for visits beyond the municipal boundary.[5] I may observe that Eva Sanger lived nearly two miles from Dr. Clark's place of abode.[6]

[1] "You can make fools of wits, we find each hour;
But to make wits of fools is past your power."
Dryden—*Prologue to Cleomenes.*

[2] See page 104. [3] See pages 3, 38, 90. [4] See pages 20, 55, 56.
[5] *Lancet*, June 19th, 1869. [6] See page 6.

(§ 15). As regards the charges for long journeys into the country, I do not think I can usefully add to what I have said upon the subject in a preceding chapter.[1]

(*d*). The Extent of the Work done and the Time occupied in doing it.

(§ 16). It can hardly be necessary to say much upon a point so obvious to every reflecting mind. Some cases can be treated easily, and the patient restored to health after a few consultations with the Doctor at his own home, or by a few visits paid during his daily rounds; others may occasion much trouble and considerable loss of time; and now and then almost the whole time of the medical man may be required by a single patient.

(§ 17). A case of the latter description occurred to Dr. Clark in early life, when he was private physician in the family of a late distinguished nobleman and statesman, who afterwards wrote to him in the following terms:—

"I cannot allow you to leave this neighbourhood without once more expressing to you how sincerely grateful I feel to you for your attention to my mother during her long illness. I have never before witnessed such solicitude and watchfulness in any medical man. It is scarcely an exaggeration to say, that for six months you never quitted her couch night or day; and I entertain not a doubt that your observation and judgment prolonged her life several months. Were I, or any one dear to me, on a bed of sickness, I should earnestly desire your aid, if you were disengaged, and would warmly recommend any other person to employ you."

(§ 18). Now the mode in which the remuneration of a medical man ought to be calculated under such circumstances became the subject of discussion quite recently in reference to the claim already referred to of Dr. Macloughlin, and I transcribe the following report from one of the daily newspapers of July 28th, 1869:—

(*Before Sir* W. M. James.)

IRVINE *v.* SULLIVAN.

This cause occupied the greater part of yesterday and to-day, but the only question of interest in it was as to a claim by a Dr. Macloughlin against the estate of General da Pontes, the testator.

General da Pontes, in the spring of 1868, was seized with illness at Ryde, and having no friend with him, sent for Dr. Macloughlin, a practising London physician, who was a friend of the general's, and desired him to stay with him during his illness. The doctor did so, and acted as medical adviser in conjunction with a local practitioner. In that capacity it was necessary frequently to stay up all night with the patient. Dr. Macloughlin learned, however, during his stay, that the testator had bequeathed him £1000 by his will, and therefore thought it prudent to call in Dr. Burrows, who came from London, and approved of the treatment pursued. Dr.

[1] Chapter xiii.

Macloughlin remained with the testator till his death, on the 30th of April, and subsequently attended his funeral at Orleans. Dr. Macloughlin claimed to be paid by the testator's estate, fifty guineas special fee for the journey to Ryde, and ten guineas for every subsequent day. During the hearing of the case in court, he, however, abandoned his claim in respect of the days subsequent to the 11th of April, when Dr. Burrows was called in.

The claim was opposed, on the ground that Dr. Macloughlin was called in as a friend, and not in his capacity of physician.

His Honour, however, held, that if the testator, a rich man, chose voluntarily to require the attendance and avail himself of the exclusive services of a poorer man, a physician, the latter must be paid in proportion to the abandonment he had made of his other practice on behalf of the testator. He therefore allowed the claim, except what Dr. Macloughlin had abandoned.

Mr. Kay, Q.C., Mr. Amphlett, Q.C., Mr. Willcock, Q.C., Mr. Little, Q.C., Mr. Fry, Q.C., Mr. Macheson, Q.C., Mr. Law and Mr. T. Stevens, appeared in the case.

Bearing in mind the niggardly spirit evinced towards medical men in other quarters, there is something quite refreshing in the tone of thought and language adopted by the learned Vice-Chancellor in the case of Dr. Macloughlin. Yet the painful reflection remains, that these matters are left to the fluctuating discretion of individual judges, who sometimes overrule their own previous judgments. In such a discreditable state of the law we cannot fail to appreciate more strongly the words I have cited from Gibbon :—"The discretion of the judge is the first engine of tyranny."

(*e*). The Value of the Services Rendered.

(§ 19). The "*quantum meruit*," as the lawyers say of a medical man, whether he be a physician, surgeon, or apothecary, must of necessity depend upon the nature of the case, the skill or knowledge displayed, and a great variety of other circumstances. To illustrate this proposition, I may quote an example from the popular work of a leading political writer[1] of former days :—

"Blake, the Titchfield thatcher, who broke his leg into splinters in falling from a wheat-rick, was, on account of the knowledge which he possessed beyond that of labourers in general, an object of respect. But, in its degree, and in the feelings from which it arose, how different was that respect from the respect due to our excellent neighbour Mr. Blundell, who restored the leg to perfect use, after six garrison and army surgeons had declared that it was impossible to preserve it, and that if the leg were not cut off, the man must die within twenty-four hours. It is probable that the time of Mr. Blundell was not, on this occasion, occupied more altogether than four days and four nights. Yet the effect was a great benefit to be enjoyed by Blake for probably thirty or forty years to come; and while we must see that this benefit would necessarily extend itself to the whole of his numerous family, we must not overlook those feelings of pleasure which the cure would naturally produce amongst friends, acquaintances, and neighbours."

[1] Cobbett's English Grammar, Introd., p. 6.

(§ 20). Now, in computing the money "value of the services" rendered by Mr. Blundell to the poor thatcher of Titchfield, it would not have been right to base the calculation only upon the space of time, "four days and four nights," that able surgeon was "occupied altogether" in accomplishing his useful work. The true rule would have been to offer him a pecuniary recompense that would in some measure represent the great knowledge, judgment, and scientific skill which enabled him in so short a space of time to restore the thatcher to his work with the perfect use of the shattered limb. Still further, we may be very sure that, if Mr. Blundell received any fee at all from Blake, it was a much smaller one than he would have demanded if he had been sent for to perform the same services for a neighbouring peer of the realm, or the rich squire of the village.

(§ 21). So with regard to Eva Sanger, I consider that Dr. Clark was entitled at least to his full fees as a duly qualified and duly registered physician, for restoring her to health after the husband of one of the guardians had said that he believed "she had not many hours to live,"[1] and after Sir William Jenner himself had described the case as "next to hopeless."[2]

> ——— "Health is, sure, a precious jewel
> We cannot buy too dear."
> MASSINGER'S PARLIAMENT OF LOVE, *act* iv., *scene* 1.

(*f*). THE PECUNIARY RESOURCES AND STATION IN LIFE OF THE PATIENTS.

(§ 22). I have already set forth at considerable length the rules or principles which have hitherto guided Dr. Clark in his own sphere of practice.[3] I need, therefore, only repeat the remark already made, that the aid of medical men being alike required by every class in society, from the highest to the lowest, and from the richest to the poorest, it would be absurd and highly mischievous to maintain that the fee should always be the same in amount.[4]

(§ 23). To enforce any uniform system of practice or scale of charges would be to forget and confound all distinctions and gradations in civilized society. It would intensify to an almost unbearable extent the mysterious decree of Divine Providence which, in worldly matters, must for ever separate "Dives" from "Lazarus." "For ye have the poor with you always, and whensoever ye will ye may do them good."[5] In such a state of things the exercise of the healing art, by trained practitioners, would become the monopoly of the rich; and the

[1] See pages 20, 25. [2] See page 24. [3] See page 106. [4] See page 105.
[5] Mark, chap. xiv., v. 2.

poor, as well as the very large class of individuals who are comparatively poor, would either die unseen and neglected, or be left to endure the agonies of their sufferings with no other help or relief than ignorant pretenders and quacks can supply.

(§ 24). It must necessarily be a task requiring much delicacy of feeling and nice discrimination to distinguish between those who are and those who are not in a condition to reward properly their medical advisers. At different times isolated attempts have been made, by the formation of medical societies, to establish graduated scales of charges adapted to the real or supposed ability to pay for professional services of the different classes of society inhabiting particular localities. Such a society was formed, I believe, at Manchester, a few years ago, under the title of the "Medico-Ethical Association of Manchester."[1] Afterwards, in 1866, some medical gentlemen practising in the neighbourhood of Sydenham, Forest Hill, and Dulwich, formed themselves into a society chiefly for social and literary purposes. But in the following year the society adopted, for the personal guidance of its own members, a graduated tariff of charges, based upon the principle, which must often be very fallacious, that *house rental* is, on the whole, the best criterion of the ability to pay for medical services; and they proposed to divide houses into three classes: those below 50*l.*, those between 50*l.* and 100*l.*, and those above 100*l.*[2] Whether the scheme of the "Sydenham District Medical Society" realized the hopes of its framers or not, I am unable to say; and I may observe that the attempt to form an equal scale for all practitioners, irrespectively of their legal qualifications as physicians, surgeons or apothecaries, is in flat contradiction to the whole policy of the law. Moreover, it was well remarked that "a scale that is suitable for one district is unsuitable for another; and a scale that does well for a comfortable class of patients will not answer when applied to people who have a perpetual struggle 'to make ends meet,' who form a considerable class in most districts."[3]

(§ 25). Dr. Clark thinks it is important for the interests of medical men themselves, that they should not be "hard" upon patients. He has many poor friends who could very ill afford to pay much to their doctor. Nor may he forget that he is himself deeply indebted to many distinguished medical men for rendering their invaluable advice and services to members of his own family, either without a fee or with a very small one only. The charges of medical practitioners should always, he thinks, be proportionate to the means of those who seek their assistance; and he would

[1] *Lancet*, Oct. 12, 1867, p. 466.

[2] *Ibid.*, Oct. 5, p. 445, and Oct. 12, 1867, p. 446. [3] *Ibid.*

therefore, be sorry to encourage any system or scale that would be oppressive to any class of society. But most assuredly he would be doing no service, either to his professional brethren or to the public, by endeavouring to show that such kind conduct and such considerate discrimination form any precedent for general guidance, or indeed have any bearing at all with regard to the amount of remuneration which a medical practitioner might fairly claim for attending an orphan ward of Chancery, of ample means like Eva Sanger, under the special circumstances I have detailed.

(§ 26). On the contrary, I maintain that it is incumbent upon physicians, surgeons and apothecaries, whose services have been sought by wealthy patients, to insist upon the payment of the *full* fees which the law of England entitles them to claim and recover. It is, indeed, only by a rigid adherence to that salutary rule that they can support the honour of their profession, or ever hope to be of any service to that large body of patients who, although in equal need of their help, possess far less ability to pay them adequately for their professional advice and assistance.

(*g*). Any Special or Peculiar Circumstances increasing the Duties and augmenting the responsibility of the Medical Practitioner.

(§ 27). The class of cases to which I refer are of frequent occurrence. The question has, however, been discussed somewhat fully in a previous chapter,[1] and I am not aware that I can usefully add much to what I have already said. One word of explanation may yet be necessary. No medical man would expect a fee or reward for courteously giving to relatives or friends proper information as to the health or condition of any patient confided to his charge. But when he is either expressly employed, or compelled by the force of circumstances, to render extra-professional services continuously, for the benefit of his patient, it is only fair and reasonable that he should be properly recompensed for his trouble and loss of time. The principle was acted upon in Bryant *v.* Johnson,[2] and most certainly the refusal to recognize and adopt it in the case of the little girl Eva Sanger has been the means of inflicting a grievous wrong upon her medical attendant.

II.—Suggested Tribunal for Medical Accounts.

(§ 28). Every medical man who has been unhappily compelled to go to law for the recovery of his "reasonable charges," must, I think, be of opinion that the machinery now employed for investigating and settling the amount of such claims is very far

[1] See Chapter xiv. [2] See page 118.

from being satisfactory. There are several modes of enforcing the payment of medical fees which I will endeavour shortly to describe.

(§ 29). The medical practitioner may bring an action in either of the three superior courts of common law at Westminster —the Queen's Bench, the Common Pleas, or the Exchequer—if the sum claimed is above a certain amount. The case will then be tried (unless previously referred to arbitration by the consent of the parties) before one of the learned judges sitting at *Nisi Prius*, by a special or a common jury—a tribunal well adapted to decide questions relating to the recovery of ordinary debts, or to the rights of property, or to redress the wrongs of individuals, or to determine the guilt or innocence of individuals amenable to criminal justice.

(§ 30). But remembering the mode in which jury panels are formed, and that medical men, as well as the members of the other learned professions, never serve as jurymen,[1] it would, indeed, be unreasonable to expect that juries will always appreciate properly the rights, duties, and responsibilities of medical men, or be competent to assess the money value of their judgment, experience, and practical skill, in doubtful and difficult cases. The persons returned as jurors are engaged in various pursuits in life. Very few of them can boast of any scientific attainments. At any rate they have no special aptitude for dealing with medical or other scientific matters.[2] Nor does the law provide them with any criteria or tests, enabling them to judge whether the charges brought under their notice in each instance are "fair

[1] The exemption from serving on juries extends to peers, judges, clergymen of all denominations, serjeants and barristers-at-law, doctors and advocates of the civil law, attorneys, proctors and solicitors, officers of the courts, coroners, *registered physicians, surgeons and apothecaries* and many other persons. The statute enacts that their names shall not be inserted in any list of men qualified or liable to serve as jurors (6 George IV., cap. 50, s. 2; *and as to the exemption of registered medical practitioners, see also 35th section of the "Medical Act,"* 21 and 22 Vict., cap. 90, 1858).

[2] The famous French astronomer, M. Arago, once complained of the scarcity of the meanest knowledge of scientific facts among the middle ranks of society in France. We can certainly re-echo the complaint from this side of the Channel. By way of example I may quote an amusing anecdote, showing how the claims of medical men might sometimes be dealt with by provincial juries. Some years ago my learned and eminent friend Sir G. A. Arney—then practising on the Western Circuit, but now Chief Justice in New Zealand—was endeavouring to explain to a Wiltshire jury at *Nisi Prius* the nature of the claim of his client—the plaintiff, who was a local medical practitioner of good standing. The able counsel was sanguine enough to believe that his arguments were duly appreciated, until one of the jurors, a respectable farmer, nudged the elbow of a brother juryman, and, in a whisper sufficiently loud to be heard and cause a titter in court, asked the extraordinary question: "Be *he* talkin, *for* un or *against* un?"

and reasonable" or not. The ideas they entertain must needs be of the most vague description. So it must frequently happen that the verdicts of juries in medical cases are arbitrary and conflicting, and wholly fail to give satisfaction either to the litigants or to the public.

(§ 31). Instead of resorting to the superior courts of law at Westminster, a medical practitioner, if he be a man of great nerve and daring, may also, in some cases, plunge into Chancery if he pleases. For instance, he may institute a suit or claim for the administration of the estate of a deceased patient, whose representatives refuse to pay what is owing to him from the deceased.[1] Or he may apply to an equity judge in chambers whenever the property of his deceased patient, or of a ward of court, has been brought into Chancery by means of some Chancery suit already in existence.[2] Yet, let it not be forgotten that, in either case a "chief clerk" may assume to pronounce his "decision" upon the claim! and if so, judging from the manner in which Dr. Clark was treated in Sanger *v.* Sanger, I do unfeignedly say that, in my opinion, it would puzzle the wit of man to find a worse tribunal for the determination of such matters. It would, I think, be far better to give up all hope of remuneration than to go through such a terrible ordeal.

(§ 32). Or the medical man may proceed by means of a plaint or a summons in one of the County Courts scattered throughout the kingdom, or in the Mayor's Court of London,[3] or some other court of limited jurisdiction, when the sum claimed is *below* a certain amount. Some of the judges of these tribunals are, it seems, anxious to be relieved altogether of their jurisdiction over medical bills. "I wish," said the County Court judge in Lincolnshire, "there was a taxing officer for medical accounts; it would save me a deal of trouble."[4]

(§ 33). Even if I possessed the requisite knowledge—which I certainly do not—I can scarcely think it necessary that I should attempt at this moment to explain all the minute details that might require adjustment in connection with the plan I shall venture to propose. My only object is to offer respectfully to the public and the profession, a few suggestions tending, I trust, to show that, by the aid of the Legislature, a cheap and expeditious system might be established for ascertaining and fixing the amount

[1] Clark *v.* Nicholls, see pages 106-108.

[2] Dr. Macloughlin's claim in Irvine *v.* Sullivan (pages 119, 146), and the case of Sanger *v.* Sanger, are instances of this mode of proceeding.

[3] The action Bryant *v.* Johnson was originally commenced in the Mayor's Court, and afterwards removed into the Queen's Bench by certiorari.

[4] See the heading to this chapter.

of medical charges in all cases, without creating any new court or seriously disturbing the rules of practice that prevail in the several tribunals which now take cognizance of such claims.

(§ 34). In the first place let us "take a hint" from the practice pursued by lawyers in reference to their bills of costs. They know much better than medical men how to secure their professional earnings. When a client is sued *at law*, by an attorney or solicitor—an event which does not often occur—why is it only necessary in general for the attorney to show that he was retained, and that the work was done, without proving at the same time that his charges are reasonable? The answer is thus given in a legal text book:—

"No evidence need, in general, be given that the charges are reasonable, for if the bills have not been taxed, their reasonableness is admitted by the defendant not procuring such taxation."[1]

The fact is, that when disputes arise with respect to the costs of attorneys or solicitors, it is not usual to send the bills to a jury. Nor are they ever left, like those of medical practitioners, to the discretion of a single judge or a clerk. But whether the costs have been incurred in relation to actions or suits in the superior courts of law or equity, or conveyancing, bankruptcy, or any other species of legal business, the method invariably adopted is to refer the bills to certain officials called MASTERS, or TAXING MASTERS, or REGISTRARS, who having themselves been engaged in extensive practice, are conversant with every question that can arise in reference to law costs.

(§ 35). There is not a court in the kingdom that has not attached to it some official or officials whose business it is to tax the costs and settle the accounts of the attorneys and solicitors. In each of the courts of Queen's Bench, Common Pleas and Exchequer, there are five "Masters," and "their chief duties are to tax costs and to attend the court whilst sitting."[2] To the court of Chancery seven "Taxing Masters" are attached. In Bankruptcy there are two "Taxing Masters." In the courts of Probate, Divorce and Matrimonial Causes the duty is performed by the "Registrars." In lunacy proceedings the costs are settled by one of the "Masters in Lunacy." In the Mayor's Court of London the same duty devolves upon the "Registrar," and the like system prevails in the County Courts.

(§ 36). Now let me here observe that the taxation of a complicated bill of costs of an attorney and solicitor may be a

[1] Chitty's Archbold's Practice of the Court of Queen's Bench, vol. i., p. 130, 11th ed.

[2] Ibid., vol. i., p. 10.

difficult undertaking. But surely it cannot be more difficult or require more discrimination than the task of deciding justly the amount of remuneration to which a medical man may be entitled under peculiar circumstances in perilous cases. For settling the costs of attorneys and solicitors a fixed tariff has been established, and in many instances the taxing officers may have scarcely any discretion to exercise. But in fixing the proper compensation of a medical practitioner, every case must be dealt with according to the merits. It is not possible to frame any uniform scale or tariff of charges. The nicest discrimination will always be required. To act upon any hard, undeviating rule would lead to the grossest injustice both to medical men and to their patients.

(§ 37). Even the judges of the superior courts of common law often act upon the principle that trial by jury is not in all cases the best mode of arriving at a satisfactory decision. When complicated accounts are the subject of dispute, a judge may compel the parties to accept a reference.[1] So also in matters requiring scientific or other special knowledge, the judge, *with the consent of the parties*, is empowered to make an order referring the disputed matters to skilful arbitrators.[2] This was, indeed, the plan pursued in Bryant *v.* Johnson. In the ordinary course of things that case would have been tried by a jury at *Nisi Prius*. But both the plaintiff and the defendant, being surgeons, considered that medical charges and purely medical questions could not be properly assessed or settled by a jury. Accordingly, under the order of Mr. Justice Willes, the case was referred to Sir William Fergusson and Mr. Tatum, who made their award in the mode I have stated.[3]

(§ 38). Reverting also for a moment to the practice of the High Court of Chancery, we shall find that even the equity judges sometimes seek the aid and advice of experts and scientific persons before they pronounce their judgments. Let me cite a few examples:—

(*a*). Complicated accounts and matters requiring scientific and engineering knowledge are referred, under the Act 15 and 16 Vict., c. 80, s. 42, to accountants, merchants, engineers, scientific persons, and experts. As regards accounts, such references are of frequent occurrence; and occasionally in other matters. Thus, in the case of the "Attorney-General *v.* Chambers," Lord Cranworth directed civil engineers to make special reports, with

[1] See 17 & 18, Vict., c. 125. [2] Ibid. [3] See pp. 118, 127.

the view of determining the right of the Crown to the seashore.[1] So also Lord Romilly, in "Case *v.* The Midland Railway Company," directed that experiments should be made by Mr. William Pole, a civil engineer, to ascertain the effect of steam navigation on a canal.[2]

(*b*). Again, it is often necessary to investigate the titles to estates with a view to the investment of moneys under the control of the Court of Chancery, upon mortgages or purchases, or with a view to sales. It may also be needful to prepare and settle the draft of a conveyance, or a mortgage, or a settlement upon the marriage of an infant ward of court, or some other important instrument. These duties are never performed by the equity judges in person or their clerks; but the task is confided to six learned barristers, appointed by the Lord Chancellor for that very purpose, who have practised as conveyancing counsel for ten years at least, and are called the "Conveyancing Counsel of the Court of Chancery."[3] The business is distributed between them in rotation, according to established rules.[4]

(*c*). So also when the bills of costs of solicitors in relation to Chancery proceedings or to conveyancing business have to be settled, the duty is not performed by the judge, but referred to one of the seven taxing masters. Besides which, if the bills also contain items relating to common law business, the Chancery taxing masters may refer such items to the common law masters for taxation; showing how carefully it is provided that law costs shall be settled only by persons conversant with each department of legal practice to which the business transacted belongs.

(§ 39). Now, if learned equity judges often find it needful, before pronouncing judgment, to refer matters of account to accountants and merchants, and matters requiring scientific knowledge to engineers and experts; to keep a permanent staff of learned conveyancing counsel to examine titles and prepare deeds; and to refer the bills of costs of solicitors to taxing masters, why should not some similar machinery be adopted in reference to medical charges? Upon what principle can it be deemed right or expedient that the claims of medical practitioners, often involving questions much more momentous, and requiring at least equal discrimination, should be left to an uninstructed

[1] De Gex, Macnaghten and Gordon's Reports, vol. iv., p. 206; *Jurist*, vol. v., new series, p. 745.

[2] Beavan's Reports, vol. ii., p. 247, and *Jurist*, vol. v., new series, p. 1017.

[3] Daniel's Chancery Practice, ed. Field, Dunn and Biddle, 1867, vol. ii., pp. 1066, 1067.

[4] Ibid.

jury, or to the arbitrary discretion of a single judge? Or what is far worse, to the determination of some chief clerk "aping the manners of a judge," and who cannot, by the utmost stretch of courtesy, be supposed to possess the smallest personal knowledge or experience in connection with such matters?

(§ 40). My proposal, therefore, is, that a sufficient number of competent persons should be appointed by the Crown, and called "MEDICAL ASSESSORS," or "MEDICAL TAXING MASTERS;" that all disputed medical questions which hereafter become the subject of litigation in any of the courts of law or equity shall, in the first instance, and upon the application of either party, be referred to such officials for investigation; that the business should be divided between them in rotation, and conducted according to general rules and regulations, to be hereafter established; that they should deal with each claim upon the merits, and according to some such criteria or tests as those I have suggested; that the result of each reference should be embodied in a short written report or certificate in the mode now adopted by the taxing masters of the Court of Chancery; that such report or certificate should be binding upon the parties, unless either of them should state specific objections in writing; and that, in the latter case, the points in dispute should be brought before the court or the judge directing the reference for final determination.

III.—SUGGESTIONS FOR AMENDING THE LAW IN RELATION TO WARDS OF CHANCERY.

(§ 41). Enough has been said, I think, to show that the law of England, in reference to medical charges and purely medical questions, is glaringly defective. It seems to me, however, to stand still more in need of amendment as regards other matters of a medico-legal character of far greater social importance. I allude especially to the cloudy and mysterious state of the legal provisions which are now suffered to regulate or confuse the reciprocal rights, duties and responsibilities of guardians, next friends, tutors and others intrusted with the care, custody and management of wards of Chancery.

(§ 42). Taking as a specimen the case of the little girl Eva Sanger, the whole system appears to be a labyrinth of doubt, chicane and perplexity. As I have already said, neither the guardians nor the next friend, nor the schoolmistress, would make themselves personally responsible for the child. None of them seemed to understand their position or their duties. None of them would give directions, or even afford moral support, whilst Dr. Clark was sedulously occupied in rescuing the young ward from imminent danger. He had, therefore, to decide whether he would retreat from the disagreeable position in which he had been placed,

or continue, in spite of every obstacle, to watch over the orphan at his own risk, until he knew that she had safely passed through the crisis that imperilled her life. Acting in accordance with the dictates of that "inner monitor" which must often be our only trustworthy guide, he adopted the latter alternative; and for doing so, instead of receiving thanks, he has sustained a very heavy loss of time and of money, and, moreover, been branded as a "devourer of orphans' estates," and exposed to public insult and contumely. The mere fact that such a thing can happen in a British court of equity, in the reign of her most gracious Majesty Queen Victoria, is, I maintain, a scandal and a disgrace to our boasted civilization.

(§ 43). The legal results arrived at in this case of Sanger *v.* Sanger seem to me to be sufficiently alarming to arouse the attention of the Legislature. Will not every guardian and every schoolmistress in the kingdom be at liberty, under the assumed sanction of Lord Romilly's judgment, to say whether a sick or dying ward stands in need of medical aid or not? And how much or how little of such aid shall be afforded? And how often the physician shall be allowed to see his patient? And what system of diet, regimen and general treatment shall be pursued? May they not obstruct, annoy and insult the physician, and disobey his advice with impunity? Without asking leave of law or of conscience, may they not dismiss him from attendance, and, under the pretence of "saving expense," leave a ward whose life is still in jeopardy, to live or die without any medical assistance whatever? And who is there to call them to an account? Will they not be encouraged to believe that all this may be done without fear of rebuke, and without incurring the smallest risk of being either dismissed from their offices by the Court of Chancery, or of being punished criminally, if, through their unfeeling conduct, death should ultimately put an end to the sufferings of the unhappy orphan child confided by that court to their charge?

(§ 44). Seriously judging the matter according to the small measure of light that guides my own understanding, I begin, for the first time in my life, to feel with the late Lord Langdale, that there are, indeed, "inconveniences attending the practice (of the medical profession) which appear truly odious and abominable." [1]

(§ 45). As regards the special responsibilities of medical men, we continually hear of cases in which it is plain that they are not sufficiently shielded from danger whilst performing their anxious duties. I have myself heard a physician of high standing in professional practice decline to take charge of a patient, simply because, in his opinion, the law of England would not adequately protect him.

[1] Hardy's Life of Lord Langdale, vol. i., p. 22.

(§ 46). Indeed, the public are frequently made aware, through the newspapers, of events and circumstances leading to the belief that the continuance of human life may have been dependent upon the possession or enjoyment—the loss or gain—of property. The very opulence of patients may often largely increase the trouble of the physician, and give rise to difficulties which would not exist if the patients were poor, and no money questions could arise. In all such instances it is more for the interest of the public than of medical men, that the discretion of the latter should not be shackled, and that the highest fees should be claimed and paid for services which may often be of priceless value. If the contrary system be pursued, the best practitioners will refuse to undertake doubtful and suspicious cases. They will shrink from investigating or coming into contact with them. There being no prospect of adequate remuneration, they will not be able to afford the time. They will see that a man who acts independently only gets abused or laughed at for knight-errantry. The duty would thus fall into the hands of practitioners of inferior professional standing; and most assuredly it would not be conducive to the public welfare to employ men who cannot maintain an independent position, or who would be too pliant or ready to enter into "special bargains or arrangements" to work for fees discreditably low.

(§ 47). A great judge,[1] remarkable for his sagacity, once warned us of the consequences which might arise if medical men are bound by too strict a rule, or exposed unduly to vexatious opposition or needless penalties. "It will tend," said Lord Ellenborough, "to encompass a most important and anxious profession with such dangers as would deter reflecting men from entering into it."

(§ 48). Actuated by the feelings and views I have thus feebly expressed, I have ventured, with great diffidence, to offer the preceding suggestions. I wish the whole subject to be carefully weighed and examined, not only by the profession, but also by parents, lawyers, and every intelligent member of society in the kingdom. Above all, I earnestly hope my little book may fall into the hands of some gifted statesman, who will undertake the task of carrying out the suggestion previously offered with respect to the appointment of a Royal Commission or Select Parliamentary Committee. Let full inquiry be made, not only with respect to medical charges, but as to the mode in which the High Court of Chancery and all persons appointed under its authority perform the duties imposed by law in respect of orphan wards, under the

[1] Lord Ellenborough, in the case of Rex *v.* Williamson, 3 Car. and P. 635, A.D. 1807.

supreme power delegated to that court by the Crown, as *parens patriæ*. The points which seem to require special notice, I have shortly mentioned in the Introduction.

(§ 49). The Master of the Rolls himself, being a peer of the realm as well as an equity judge, has a responsibility in both positions. It is within his sphere of duty, not only *jus dicere*, or interpret law, but also, in conjunction with other members of the Legislature, *jus dare*, and make law or give law.[1] In the latter capacity he might strive to apply a remedy to the dangerous system of social policy disclosed by Eva Sanger's case. He might bring forward and endeavour to obtain the sanction of the Legislature to some remedial measure for better defining the duties of guardians, next friends, and medical attendants of orphan wards, and for the better protection of their persons and estates. Or, failing in that object, his lordship, I submit, is morally bound, in consistency with his own avowed sentiments on the subject, to make an effort to free medical men from the present unjust state of the law, which debars them from obtaining a proper recompense for their services, and yet leaves them exposed, in a case like Eva Sanger's, to all the pains and penalties of neglect and *mala praxis*.[2]

[1] Lord Bacon pointed out this distinction between judicial and legislative functions. "Judges ought," he says, "to remember that their office is *jus dicere* and not *jus dare*; to interpret law, and not to make law or give law." —*Bacon's Essays*, ed. Archbishop Whateley, "Of Judicature."

[2] See pages 36, 38.

CHAPTER XVII.

§ 1. RETROSPECT.—§§ 2-9. SHORT SUMMARY OF FACTS.—§§ 10-14. CONCLUSION.

"This is a true, unvarnished, undisguised state of the affair. You will judge of it."—BURKE.[1]

(§ 1). The disagreeable duty imposed upon me by anonymous slanderers is now nearly performed. In undertaking a task so little congenial with my tastes, my feelings and my habits, I do not forget the extreme difficulty of silencing any unfounded report to which the Press has given universal currency. "Let a plausible lie only get half-an-hour's start of the truth," exclaimed the late Mr. O'Connell, "and the truth will never be able to catch and crush it." In Dr. Clark's case, unfortunately, the lie has had many months' start of the truth. Yet he could not sit still or be silent when his reputation was on trial. He could not regard with indifference anything that tended to "filch from him his good name." He could not treat the attacks to which he has been exposed as "some of those little rubs that Providence sends to enhance the value of its favours." Although he might inwardly despise his assailants, he was bound to free his professional character from unjust aspersions. Nor could he forget that one of the leading organs of the profession called on him for an explanation.[2] It plainly, therefore, became his duty to come forward and endeavour to justify his claim in the case of Eva Sanger, and, if possible, satisfy his brethren, that, instead of being amenable to censure, he had strained every nerve to sustain the rights and elevate the position of the profession to which he belongs, and might fairly claim their support and approbation.

(§ 2). Let me now ask my readers to cast aside every vestige of prejudice, and look calmly and candidly

[1] Speech at Bristol, previous to the election, 1780,—Bohn's ed., vol. ii., p. 134.

[2] *Lancet*, March 20th.

at some of the leading facts disclosed in this narrative. When Dr. Clark was called to attend the little girl Eva Sanger, at the end of March, 1865, it was thought that she had "only a few hours to live."[1] His attendance extended over a period of about eleven months,[2] during which period he visited her on ninety-six separate days,[3] at St. John's Wood, which was about two miles from his place of abode.[4] It was admitted that such visits were not too frequent or unnecessary.[5]

(§ 3). He also visited the young ward twice at Worthing,[6] in April, and thrice at Brighton,[7] in August, 1865; and in a preceding chapter[8] I have proved that such journeys to the seaside were necessary, and taken under competent authority.

(§ 4). Throughout the illness of the child, he was placed in a most embarrassing position. The advice he gave was disobeyed by the acting guardian and the schoolmistress, who had charge of his patient under an order of the court of Chancery.[9] Besides, his duties became more arduous and difficult by reason of various impediments that were thrown in his way, and the necessity he was under of consulting many persons who could never be brought to act in harmony with each other.[10] Yet all parties concerned allow that his services were of very great value to the little girl,[11] and the husband of one of the guardians went so far as to declare, that in his opinion her recovery was like a resurrection from the dead.[12]

(§ 5). At the end of the eleven months, Dr. Clark was discourteously dismissed, in December, 1865, from further attendance, by the acting guardian,[13] whilst the malady of the child was still in existence, and in spite of the opinion expressed by her Majesty's Physician in Ordinary and himself, that she still stood in need of medical advice and assistance.[14]

(§ 6). Some months afterwards, he was asked to send in an account of his charges.[15] *The fees he claimed were*

[1] Pages 20, 21, 25.
[2] Page 57.
[3] Ibid.
[4] Page 6.
[5] Pages 108, 109.
[6] Pages 28, 115, 137.
[7] Pages 41, 116, 137.
[8] Chapter xiii.
[9] Page 32.
[10] Pages 23, 122, 136.
[11] Pages 55, 103.
[12] Page 55.
[13] Page 48.
[14] Pages 45, 48.
[15] Page 54.

those which the law allows to him as a duly qualified and duly registered physician.[1] Yet he never insisted upon any particular scale of payment, but when the amount was demurred to, he repeatedly proposed that his recompense should be fairly assessed by impartial medical arbitrators.[2] The proposal was always declined,[3] on the alleged ground that it was not practicable, and a counter-proposal was made that he should himself bring the claims before the judge in chambers, in the Chancery suit of Sanger v. Sanger.[4] Subsequently, the solicitors of the guardians offered to relieve him from that duty, by originating the necessary proceedings in Chancery, in the names of their own clients.[5] Upon the faith of the latter offer, Dr. Clark signed the paper prepared by their solicitor, waiving his legal right to enforce his claim against the guardians personally in the courts of common law.[6]

(§ 7). Afterwards the guardians refused to bring his claim, as promised, in a friendly way, before the judge in chambers,[7] and so he was driven into Chancery, sorely against his will.[8] No offer of any sort or description was ever made to him until he had incurred expenses in that court which would swallow up more than half the sum they offered.[9] The proceedings in Chancery lasted exactly one whole year and eight months beyond.[10] A considerable portion of the delay arose from vexatious, quibbling objections raised upon mere technical grounds by the solicitors of the infants and guardians.[11] Besides which, a mass of irregular, gossiping correspondence, not legally admissible, was forced upon the court, which added largely to the bulk of the evidence and the costs of the inquiry.[12]

(§ 8). The Chancery proceedings were, in fact, so dilatory and so costly, that the fees to counsel and the other law expenses incurred on both sides will exceed the whole amount of the sum he originally claimed.[13] All these costs would have been avoided if our original

[1] Pages 98, 99, 102, 107.
[2] Pages 60, 61.
[3] Page 62.
[4] Page 60.
[5] Page 61.
[6] Page 63.
[7] Pages 63, 64.
[8] Page 66.
[9] Page 76.
[10] Page 84.
[11] Page 74.
[12] Ibid.
[13] Page 93.

offer of arbitration had been accepted.[1] In order still further to swell the costs, two separate sets of counsel and of lawyers were retained against Dr. Clark, when Lord Romilly himself declared that "one opposition was quite sufficient."[2] It is lamentable to add, that, notwithstanding all this lavish expenditure of time and of money, the vital questions which alone induced him to undertake the disagreeable duty of bringing his name before the public have only been raised and not solved by the late judgment of his lordship. It is still more to be regretted that such judgment, as regards professional visits in London, is in direct conflict, as I have already shown,[3] with his own previous decision in Clark *v.* Nicholls.

(§ 9). As regards the reasonableness of the charges claimed by Dr. Clark for visits and journeys as medical attendant of Eva Sanger, I need only refer my readers to the chapters which I have expressly devoted to that subject.[4] They were the usual and proper charges of a duly qualified and duly registered physician, and were supported by medical testimony[5] of a high order,—far higher, indeed, than any which the guardians of Eva Sanger were able to produce.[6]

(§ 10). Bearing in mind and candidly weighing all the facts and circumstances of the case of Eva Sanger, of which this short summary gives only a very imperfect outline, let my readers say whether it is right, fair and just, or likely to be beneficial to other orphan wards of Chancery or their medical attendants, that the decision of the Master of the Rolls in Sanger *v.* Sanger should be permitted to stand? Whether the phrase "devourer of orphans' estates" is applicable to Dr. Clark, or to the guardians of Eva Sanger, or the court over which Lord Romilly presides? Whether such cases as Dr. Clark's do not manifestly show the urgent necessity of a complete reform of the existing system of medical charges, and the establishment of some tribunal for settling such questions upon an equitable basis, in the mode I have ventured to suggest? And, lastly, whether there is not

[1] Page 60.
[2] Page 93.
[3] Page 108.
[4] Chapters xii. and xiii.
[5] See Affidavits in Appendix.
[6] Pages 109, 110.

equal need of a sweeping reform of the system now pursued by the High Court of Chancery, in dealing with children unhappily deprived of parental care and control?

(§ 11). Whether the conduct of the guardians of Eva Sanger or of Dr. Clark is best deserving of the approbation of the wise and the humane, is a question upon which he not only courts, but demands, the most rigid examination. "Most certainly," said the greatest of modern orators, when his character as a representative of the people was impugned, "it is our duty to examine; and it is our interest too. But it must be with discretion; with an attention to all the circumstances and all the motives, like sound judges, and not like cavillers, pettifoggers, and quibbling pleaders prying into flaws and hunting for exceptions." Dr. Clark's thoughts, his motives and his acts are now fully exposed to public scrutiny. Nothing has been concealed; and he claims to be judged according to the whole tenour of his conduct.

(§ 12). It is very probable that he "may have fallen into errors; and he must have faults." Let his opponents, however, show him where he was wrong. Let them point out to him some "better way," some wiser rule of conduct. Let them infuse into his weak understanding a brighter ray of light, and they shall receive his heartfelt thanks, and their names shall for ever dwell in his grateful memory.

(§ 13). But I must now conclude. It is, I repeat, a positive relief to him to know that the whole of the facts will be before his brethren and the public. To them he appeals from the hasty, ill-considered utterances of his traducers. They will say whether their sympathies are with the guardians of the orphan, or with her medical attendant. The Master of the Rolls, being well aware that his decision is not final, observes in his judgment, as I have already mentioned, that it "is very likely this case will go further." Whether his claim be ultimately carried before a higher tribunal or not, Dr. Clark has fulfilled the pledge he publicly gave, that he would not rest until his conduct on the one hand, and the acts, doings and sayings of the guardians of Eva Sanger or the other, had been duly sifted. So, submitting all the facts and circumstances to the patient and impartial

consideration of the profession and the public, he calmly awaits the verdict.

(§ 14). Whatever that verdict may be, he for one will never arraign its justice. He could even wish the whole matter to be examined and determined irrespectively of his own personal interests. He feels that in the case of Eva Sanger the dearest rights of countless orphan children of fortune may be involved far more deeply and closely than those of the humble medical man, who sacrifices his comfort and peace of mind by coming forward to plead their cause. Throughout life the practice of "the healing art" has been with him rather a labour of love and duty, than an occupation for amassing lucre. The present conflict he feels to be one of principle and not of money. Uninfluenced, therefore, by the hope of gain or the fear of loss, he will regard the publication of this little book with feelings of placid tranquillity,—

> "The joy unequalled, if its end it gain,
> And if it lose, attended with no pain."[1]

[1] "Essay on Man," ep. iv., l. 315, 316.

APPENDIX.

MEDICAL AFFIDAVITS SWORN AND FILED IN SUPPORT OF DR. CLARK'S CLAIM IN SANGER *v.* SANGER.

[No. 1.]

SIR WILLIAM JENNER, BART.,

M.D., London, 1844; F.R.C.P., London, 1852; F.R.S.; Physician in Ordinary to H.M. the Queen and to H.R.H. the Prince of Wales, &c., &c.

[*Affidavit sworn 25th November, and filed 26th November,* 1868.]

1. On or about the 23rd of March, 1865, I saw the infant plaintiff, Eva Sanger, in consultation with Dr. James Clark, at the house of Mrs. Twigg, at St. John's Wood.

2. The child was then suffering from disease of the mesenteric glands, which is a malady of the most serious character. She was dangerously ill and greatly emaciated, and, in my opinion, her life was then in imminent peril.

3. I saw her again, in consultation with Dr. Clark, on or about the 13th of May, 1865, when her outward appearance was improved. But, in my judgment, it was certainly the duty of her medical attendant not to relax in his attention to the case, but rather to use increased efforts to promote the recovery of the young patient. I recommended also that she should reside for a time at a farm-house, which, I thought, might be very beneficial in restoring her to health.

4. I again saw Eva Sanger, in consultation with Dr. Clark, on the 11th of December, and, on that occasion, I wrote and signed the certificate of that date, now produced, and marked "R." I adhere to the opinion expressed in that certificate.*

5. Having perused the bill of charges sent in by Dr. Clark, now produced to me, and marked "A,"† I am not prepared to say that the visits and journeys charged for therein were unnecessarily frequent, but, on the contrary, I am deliberately of opinion that the case of Eva Sanger was one which required constant attention and the most watchful care on the part of her medical attendant.

6. I think the fair way of settling the amount, in case of dispute, would have been to refer the account to medical arbitrators, and that the mode of arbitration suggested by Dr. Clark in his letter to the solicitors of the guardians, of the 23rd May, 1866 (of which a copy is now produced to me, marked "S"‡), was reasonable and judicious, and well calculated to lead to a satisfactory decision.

* For this certificate, see page 45.

† See this account, at page 57.

‡ For copy of this letter, see page 60.

[No. 2.]

PROFESSOR JOHN RUSSELL REYNOLDS,

M.D., London, 1852; F.R.C.P., London, 1859; Professor of the Principles and Practice of Medicine in University College, and Physician to University College Hospital, &c., &c.

[*Affidavit sworn 25th June, and filed 7th July,* 1866.]

1. I have been acquainted for some years with Dr. Clark, of St. Mark's Square, Regent's Park.

2. In the early part of the month of May last he consulted me with reference to the amount of his professional charges for attendance upon Miss Sanger and Miss Eva Sanger, who he informed me are wards of court.

3. He produced to me the particulars of his charges as set forth in the paper writings marked "A" and "B" respectively.*

4. After carefully considering the items, I gave to Dr. Clark a certificate† of the opinion I formed of his accounts.

5. I have again carefully considered the charges for professional services contained in the said accounts "A" and "B" respectively; and having reference to the circumstances of the case, and the nature of the illness of the Misses Sanger, I am still of opinion that the charges are usual charges, and are fair and reasonable in amount, and in my deliberate judgment the claim of Dr. Clark ought to be allowed.

[No. 3.]

SIR WILLIAM FERGUSSON, BART.,

F.R.S., F.R.C.S., Eng. and Edin.; Serjeant-Surgeon to H.M. the Queen, &c., &c.

[*Affidavit sworn 6th July, and filed 7th July,* 1866.]

1. I have known Dr. Clark, of St. Mark's Square, as a respectable medical practitioner for several years.

2. I have carefully read over the affidavit of John Russell Reynolds, Esq., M.D., Professor of Clinical Medicine in University College, London, and the certificate of his opinion therein referred to, and also the exhibits marked "A" and "B" respectively referred to in such affidavit.

3. My opinion as to the fairness and reasonableness of the charges of Dr. Clark as the medical attendant of Miss Sanger and Miss Eva Sanger, is in complete accordance with that of Dr. Reynolds.

4. Under an order of her Majesty's Court of Queen's Bench, I and Thomas Tatum, Esq., F.R.C.S., and Surgeon of St. George's Hospital, were lately appointed arbitrators in a cause‡ involving the question of the amount of charge which a surgeon could properly make for visiting a patient at Brighton, and for extra attendances. My co-arbitrator and myself decided that a charge of twenty-five guineas, which is at the rate of half-a-guinea per mile, would be only a fair, moderate, and reasonable charge for such professional attendance, and from what I learn of the case of Miss Eva Sanger, I think that her guardians have no reason to complain of Dr. Clark's charge for his journeys to Worthing and Brighton.

5. Although an attempt was afterwards made to upset the award of Mr. Tatum and myself, the Court of Queen's Bench, after full argument at the bar, before the full court, confirmed and upheld such award.

* See pages 57, 59. † See page 57. ‡ Bryant *v.* Johnson, see page 118.

[No. 4.]

DR. JOHN FOSTER REEVE,

M.D., King's College, Aberdeen, 1857; and M.R.C.S., Eng., 1846.

[*Affidavit sworn 3rd July, and filed 4th July,* 1867.]

1. I have been personally acquainted with Dr. Clark for five years and upwards, and, on several occasions, I have met him professionally in consultation.

2. I have practised my profession as a physician and surgeon for about seventeen years, and I am well acquainted with the proper and usual scale of charges adopted by medical practitioners of the same standing as myself and Dr. Clark.

3. I have examined the accounts marked "A" and "B" respectively, and, according to the best of my judgment, the charges made by Dr. Clark for his attendance upon Miss Sanger, and especially upon Miss Eva Sanger, are moderate and reasonable in amount. Taking into consideration the nature of the illness of Miss Eva Sanger, and the very peculiar and harassing circumstances under which Dr. Clark attended her, I cannot but feel that he is justly entitled to the amount he claims.

4. As regards the scale of charges usually adopted in cases where physicians and surgeons are attending patients at a distance from their own homes, I have always understood that the charge is regulated according to the distance they have to travel, and the station in life and the pecuniary resources of the patient. And I am deliberately of opinion, after taking all these matters into consideration, and having reference to the circumstances of the case and the nature of the illness of Miss Eva Sanger, that the charges made by Dr. Clark in the account marked "A," of half-a-guinea per mile for his journeys to Worthing and Brighton, are fair and reasonable, and ought to be paid by the guardians without any hesitation.

5. Lastly, I say, considering the nature of the illness of Miss Eva Sanger, as detailed to me by Dr. Clark, and the fact that she is a ward of court and virtually an orphan, it is my opinion that Dr. Clark would have neglected his duty if he had failed to see and watch her continually whilst she was in London. And it is also my opinion, that when, under the advice given by Dr. Clark and Dr. Jenner, her Majesty's Physician, Miss Eva Sanger was removed into the country, it was still the imperative duty of Dr. Clark to attend her with equal assiduity.

[No. 5.]

JOHN REES JAMES,

Ystalyfera, Swansea; M.R.C.S., Eng., and L.S.A., 1866.

[*Affidavit sworn 13th June, and filed 7th July,* 1866.]

1. I was, for about fifteen months previously to the 20th March, 1866, assistant to James Clark, M.D., and I was such assistant during the whole period between January and December, 1865, whilst he was attending Miss Lilly Sanger and Miss Eva Sanger.

4. Being the assistant of Dr. Clark, I often heard him express very great doubts and anxiety whether Miss Eva Sanger would ever recover from the serious illness from which she was suffering, and which threatened the existence of her life. And I have always thought, and I do now believe, that it was in a great measure owing to the skill and attention of Dr. Clark that the life of this little girl was saved.

5. I saw Miss Eva Sanger when she was in imminent peril, and it gratified me to know afterwards the great improvement which Dr. Clark's treatment had effected. I often witnessed Dr. Clark's zeal and anxiety, under difficulties, to save the life of this young lady.

[No. 6.]

DR. WILLIAM J. COLLINS.

M.D. in the University of King's College, Aberdeen, 1854; Licentiate of the Royal College of Physicians of Edinburgh, 1859; M.R.C.S., Eng., 1846; L.M., 1853.

[*Affidavit sworn 5th December, and filed 12th December,* 1868.]

1. I have been actively and successfully engaged in the practice of my profession for the last twenty-five years.

2. Throughout the whole of that period I have resided in the immediate neighbourhood of St. Mark's Square, Regent's Park, and, like my friend and nearest professional neighbour, Dr. Clark, I practise both as a physician and as a surgeon.

3. I have carefully perused and considered the affidavits sworn in this cause by Dr. Frederick Goodchild, Dr. James Turle, and Dr. Charles Corbett Blades respectively, and especially such parts of them as refer to the charges usually made by medical practitioners for their professional visits and journeys. Having so perused and considered the affidavits of those gentlemen, I am enabled to say, from my practical experience in such matters, which has been longer in duration, and I believe greater in extent, than their own, that the opinions or ideas which they have expressed on that subject are not entitled to any weight or influence whatever.

4. In the first place, it is a notorious fact that no fixed tariff of fees and charges exists among medical men, and, consequently, the greatest diversity prevails, not only among general practitioners, but also among those who are styled pure physicians and surgeons.

6. As regards schools, the statement of Dr. Goodchild and of Dr. Blades, that a very low uniform charge of so much per visit or so much per head is or ought to be made when attending young ladies at first-rate boarding-schools, is, according to my own practical experience, wholly unfounded.

9. From my own personal knowledge and experience, I deliberately say that the introduction of any system of that description into schools, other than those of an eleemosynary character, would establish a vicious and dangerous principle; and I cannot believe that in dealing with wards in Chancery such an arrangement will ever be approved by the court.

10. On the contrary, in treating a ward of Chancery who has been placed at a school under the sanction of the court, and especially where life is at stake, as it was in the case of Eva Sanger, I think that the medical attendant ought to act independently for the welfare of the ward, without being subjected to any dictation or coercion on the part either of a schoolmistress or of a guardian.

14. My own professional charge is one guinea per visit, and I do not willingly receive a smaller fee, unless poverty be pleaded, and then I occasionally take half that sum.

15. For attending a child when living at a boarding-school, my charge is precisely the same as it would be when called in to attend such child at the house of the parents or the friends.

16. As regards journeys into the country, I think that one half-guinea per mile is a reasonable and proper charge, and, consequently, the claim

made by Dr. Clark for his journeys to Worthing and Brighton is not improper or excessive. I have myself refused to accept a less fee than five guineas for attending a patient at Finchley, which is only four miles from my place of residence.

17. The opinion expressed by Dr. Goodchild, Dr. Turle, and Dr. Blades, that an experienced physician or surgeon of good standing would accept three shillings and sixpence, or five shillings, or even seven shillings and sixpence, as his ordinary fee in all cases for a professional visit, is one that I consider to be highly derogatory to the character and injurious to the interests of the profession at large. Indeed, such fees would, in many instances, be less than an expert veterinary surgeon or cowleech would charge for attending a valuable animal.

18. The fact that Dr. Clark considered it would be for the benefit of Eva Sanger to have the medicines prepared specially for her under his own personal supervision, does not, in my opinion, affect the questions now pending between him and the guardians.

[Dr. Collins then states, in support of his opinion, the various reasons I have quoted at page 113.]

21. Having perused the letter of the 23rd of May, 1866,* written by Dr. Clark to the solicitors of the guardians, I think the mode of arbitration proposed therein by Dr. Clark was fair, reasonable and judicious.

22. Taking the whole of the circumstances into careful consideration, and having regard to the undoubted success which attended the efforts of Dr. Clark, the ample means of the patient, and the refusal by the guardians of the proposal to refer the disputed accounts to arbitration, I am deliberately of opinion that Dr. Clark is justly entitled to the sum he has claimed, and that the guardians ought to have discharged his reasonable account, and thanked him for his services, instead of forcing him to embark in troublesome and expensive litigation.

[No. 7.]

DR. THOMAS BROWNING SMITH,

M.D. in the University of St. Andrew's, 1843.

[*Affidavit sworn 9th, and filed 11th January,* 1869.]

1. I have been extensively engaged in the practice of my profession for twenty-five years and upwards, of which period more than eighteen years were passed at the west-end of London. I had the honour of attending professionally the late Lord Macaulay.

2. During that time I have had repeated opportunities of meeting Dr. James Clark, and I have always felt the greatest respect for him, as a conscientious and very skilful physician and surgeon. I have often sought his advice for myself and members of my family.

3. I have perused the affidavits sworn by Dr. Frederick Goodchild, Dr. Blades, and Dr. Turle respectively, on behalf of the guardians of the infant plaintiff, Eva Sanger.

8. I do most certainly say that it was the bounden duty of any medical gentleman charged with the onerous duty of attending this young lady, to be very vigilant and constant in his attendance, in order to watch every symptom and to guard against the danger of a relapse, which might occur at any time whilst the seeds of the insidious malady still remained lurking

* See page 60.

in the system of the young patient, and, generally speaking, the fact of their existence would be perceptible only to the practised eye of the physician.

9. From the certificate of Sir William Jenner, of the 11th of December, 1865,* it is plain that, although nine months had elapsed, the disease was still in existence. This being so, I thoroughly concur in the view expressed by him, that for some years the child would be liable to a recurrence of the same disease or of similar disease of other parts.

11. Under such circumstances, I cannot entertain the smallest doubt that medical care was needed, and the guardian of this infant ward of court was not justified, after receiving the certificate of Sir William Jenner, in dispensing with the attendance of Dr. Clark or some other medical man.

12. No prudent parent would, I think, have acted in such a manner, and most assuredly, the fact that the child did not afterwards suffer a relapse, whilst it shows how skilfully the case had been treated by her medical attendant, cannot, in my judgment, afford any justification of the conduct of the guardian in depriving his young ward of all professional aid and advice.

13. It seems that, during the last five or six months of Dr. Clark's attendance on Eva Sanger, the guardian and the schoolmistress, in spite of the decided opinion to the contrary expressed by him and Sir William Jenner, took upon themselves to say that she had perfectly recovered, and that the visits of Dr. Clark were unnecessary.

14. The only reason alleged by them for holding this strange opinion was, that the outward appearance of the child had improved, and that her appetite was good. But, in truth, such external indications of health are very frequently deceptive, and they were so in the case of Eva Sanger, as the certificate of Sir William Jenner manifestly shows.

15. Under all the circumstances, I consider it was very great presumption on the part of the guardian and the schoolmistress, when the life of the child was in jeopardy, to question the opinion of Sir William Jenner and Dr. Clark, or to object to the frequency of the visits of Dr. Clark, or, indeed, to interfere at all in such a very serious matter.

16. I even feel that such conduct on their part, coupled with their neglect of the advice of Sir William Jenner and Dr. Clark, that the child should reside at a farm-house† during the critical period of her illness, was well deserving the censure of the court.

17. For various reasons, I agree with Dr. Collins in thinking that Dr. Clark is to be commended for having the medicines for Eva Sanger specially prepared under his own supervision.

18. As regards the affidavits of Dr. Goodchild, Dr. Blades, and Dr. Turle, I concur with Dr. Collins in thinking that the views of those gentlemen, with respect to professional charges and attendance at schools, are not only derogatory to the profession, but unsafe and dangerous to the patients themselves.

19. As regards the amount of fees or charges payable for medical advice and attendance, I know, from lengthened experience in my own practice, which is similar in character to that of Dr. Clark, that there is no regular scale or tariff of charges, and, consequently, the greatest diversity prevails.

20. Taking all the peculiar circumstances of the case into careful consideration, I agree with Sir William Fergusson, Dr. John Russell Reynolds, Dr. J. Foster Reeve, and Dr. Collins, that the charges of Dr. Clark, as set forth in the accounts marked "A" and "B," for professional attendance upon Lilly Laurence Sanger and Eva Sanger respectively, and the charge of one half-guinea per mile for the journeys to Worthing and Brighton, are fair and reasonable charges, and ought to be allowed by the court.

* See page 45. † See pages 30, 31.

[No. 8.]

BENJAMIN BROGDEN ORRIDGE,

32, Ironmonger Lane, London, F.G.S., Medical Agent, Common Councilman of the Ward of Cheap, and Chairman of the Library Committee of the Corporation of London.

[*Affidavit sworn 27th, and filed 28th November,* 1868.]

1. I have been in practice as a medical transfer agent and as a referee and valuer of medical property for about 25 years.

2. I have been personally acquainted with Dr. James Clark for about eighteen years, and during the whole of that time I have always heard him spoken of with respect, and I entertain a high opinion of his personal character.

3. When disputes arise with respect to medical charges, the proper course, in my opinion, is to refer the disputed account to friendly arbitrators.

9. Having perused the copy of the letter of the 23rd May, 1866,* which Dr. Clark wrote to the solicitors of the guardians, I am clearly of opinion that the arbitration proposed by Dr. Clark in that letter was a very fair and reasonable proposal; and it seems to me that if that suggestion, or any fair counter-proposal for arbitration, had been accepted by the guardians, with the approval of the court, the great trouble and expense caused by litigation might have been wholly avoided.

* See page 60.

LONDON:

Printed by J. W. LAST & Co., Legal and General Printers, Stanhope Steam Printing Works, Duke-street, Lincoln's-inn-fields, W.C.



